No. 75-4201

In the Supreme Court of the United States

OCTOBER TERM, 1975

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court (App. A, *infra*, pp. 1a-22a) is reported at 392 F. Supp. 358. The orders of the Interstate Commerce Commission in Ex Parte No. 305, *Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974* (Appendices D through M, *infra*, pp. 27a-111a) are unreported.

JURISDICTION

The judgment of the district court (App. B, *infra*, pp. 23a-24a) was entered on April 22, 1975. The notice of appeal was filed on June 20, 1975 (App. C, *infra*, pp. 25a-26a). By order of August 12, 1975, the Chief Justice extended the time for docketing the appeal to and including September 18, 1975. The jurisdiction of this Court is conferred by 28 U.S.C. 1253 and 2101(b).[1] *Aberdeen & Rockfish R.R.* v. *SCRAP*, No. 73-1966, decided June 24, 1975.

QUESTION PRESENTED

In April 1974 the Nation's railroads sought a general rate increase of 10 percent, representing to the Commission that at least part of the increase was needed to provide funds for maintenance and capital improvements that had been delayed. The Commission found that the increase appeared to be unjust and unreasonable unless the railroads devoted the bulk of the new revenues to these purposes. The railroads then filed new tariffs, which are subject to Commission orders ensuring that the increased revenues will be put to the proposed use.

The question presented is whether the Commission has the power to issue such orders, as a condition of not suspending proposed rate increases.

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[1] Pub. L. 93-584, 88 Stat. 1917, provides that after March 1, 1975, review of Interstate Commerce Commission orders is in the courts of appeals, with review in this Court by certiorari. The instant case was filed in the three-judge district court prior to March 1, 1975, and the old procedure therefore governs.

STATUTES INVOLVED

Section 15(7) of the Interstate Commerce Act, 24 Stat. 384, as amended, 49 U.S.C. 15(7), provides:

> Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare,

charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

Section 15a(2) of the Interstate Commerce Act, as added by 41 Stat. 488, and amended, 49 U.S.C. 15a(2), provides:

> In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

STATEMENT

In April 1974 the Nation's railroads (including appellees, the Chessie system)[2] filed a joint petition seeking permission to file tariffs embracing a 10 percent increase in the level of their freight rates.[3] The petition stated that "massive additional expenditures are required for maintenance and capital improvements"; the railroads asserted that sums in the billions of dollars were required to be devoted to such purposes.[4] In a statement responding to opposition

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[2] The "Chessie system" includes the Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railroad Company, and the Western Maryland Railway Company, the three appellees here.

[3] The Long Island Rail Road did not join this request (App. F, *infra*, p. 41a, n. 1). The Commission allowed new tariffs to become effective on 30 days' notice. Apps. D and E, *infra*, pp. 27a-40a.

[4] The petition was supported by pertinent excerpts from a publication entitled "The American Railroad Industry: Prospectus," a report of America's Sound Transportation Review Organization, June 30, 1970, compiled for the Association of American Railroads (The "ASTRO Report"). This report estimated that the Nation's railroads will require expenditures exceeding $3 billion per year for each of the next ten years for maintenance and capital improvements.

to the increase, the railroads (including the Chessie), reaffirmed their earlier statements that a principal justification for the increase was their need to obtain additional revenues necessary to carry out deferred maintenance of plant and equipment and to make capital improvements.

On June 3, 1974, the Commission entered the first of the four orders attacked in the court below (App. F, *infra*, pp. 41a-54a). The Commission stated that in light of the inadequate service provided by the railroads and the danger of further deterioration, the railroads needed to generate additional revenues to improve service. It concluded that while the 10 percent increase would provide such additional funds, the increase would appear to be unjust and unreasonable without assurance that the new revenues would be used to improve service, as the railroads had asserted was necessary. Accordingly, the Commission suspended the tariffs embracing the increase, but authorized the railroads to file new tariffs subject to conditions providing that most of the increase must be spent on deferred maintenance and delayed capital improvements.[5] This order was served on June 4, and the next day all the Nation's railroads, including the Chessie system, filed new tariffs pursuant to the terms and conditions of the June 3 order. The

[5] The conditions are reprinted in App. F, *infra*, pp. 45a-49a.

Commission did not suspend them and they became effective.[6]

On July 18, 1974, the Commission entered the second order at issue (App. G, *infra*, pp. 55a-76a). This order clarified the June 3 order by defining the terms "deferred maintenance" and "delayed capital improvements." The Commission also established accounting and reporting requirements so that it could verify compliance with the June 3 order.

On July 30, 1974, Chessie requested the Commission to amend its orders to provide that a railroad without "deferred maintenance" or "delayed capital improvements," as defined, could expend for any valid corporate purpose the funds generated by the increase. Chessie expressed concern that it had no "deferred maintenance" or "delayed capital improvements" and, therefore, would be unable to make use of the increase.[7] In addition, Chessie's petition raised for the first time the argument that the Commission is without power to impose such conditions. The Nation's other railroads also filed a joint petition for reconsideration and clarification, but did not challenge the Commission's power to impose conditions.

[6] By order of June 6, 1975, the Commission extended until April 30, 1976, the effectiveness of these interim increases. See App. M, *infra*, pp. 106a, 109a.

[7] Chessie argued that on May 13, 1974, its boards of directors had approved a $124 million capital improvement program. Under the Commission's orders, only capital improvements authorized after June 1, 1974, could be paid for with funds from the rate increase.

The Commission's order of August 9, 1974 (App. H, *infra*, pp. 77a-84a), while denying all petitions for reconsideration, further clarified the Commission's decisions by providing that carrier management would retain discretion to decide what projects meet the definitions of deferred maintenance and delayed capital improvements and by providing that railroads need not obtain Commission approval for particular projects. The Commission also recognized that some railroads, in anticipation of the increase, already had initiated improvement projects. In order to take account of this, the Commission allowed each railroad to count, as delayed capital improvements, projects to which funds initially were committed after January 1, 1974. This plan was designed to allow railroads to use old revenues for ordinary expenditures or projects already planned, while diverting the new revenues to supplemental improvements.

Chessie brought this suit on August 15, 1974, seeking to set aside the Commission's orders of June 3, July 18, and August 9. On August 18 District Judge Merhige issued a temporary restraining order prohibiting the Commission from enforcing its orders against Chessie.

On August 16, 1974, most of the Nation's railroads, but not Chessie, filed with the Commission another petition for clarification and modification of the July 18 and August 9 orders. On August 22 the Commission reopened the matter (App. J, *infra*, pp. 93a-

94a). It held oral argument on August 27, at which, by order of the Commission (App. K, *infra*, pp. 95a-97a), counsel for Chessie and the other railroads appeared.

On October 3, 1974, the Commission entered an order substantially modifying the conditions established by the prior orders (App. L, *infra*, pp. 98a-105a). The October 3 order provided (*id.* at 104a):

> * * * That railroad respondents, if any, which are unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined in this proceeding, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission * * *.

Chessie amended its complaint to challenge the October 3 order as well. It claimed that the new order would not help it because its maintenance and capital projects could not qualify as "new and additional capital improvements." Chessie never sought the Commission's opinion on this matter, however, and never sought permission to proceed under the October 3 option.[8]

The district court recognized that the Commission's orders "are a well-intentioned effort to cope with the vexatious deterioration of track and equipment that saps the ability of the nation's railroads to serve the public adequately" (App. A, *infra*, p. 22a), and

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[8] Seventeen railroads have been granted authority under the October 3 order; six have been denied such authority.

that Chessie's facilities, like those of virtually all the Nation's railroads, "require additional maintenance and improvement" (*id.* at 15a). It concluded, however, that "Congress has not authorized the Commission to control a carrier's expenditure of funds as a condition to withholding the suspension of rates" (*id.* at 22a) and, accordingly, enjoined the Commission from restricting Chessie's expenditure of the revenues derived from the increase.[9]

THE QUESTION IS SUBSTANTIAL

This appeal presents a question of first impression and paramount importance: can the Commission, incident to its power to suspend or not to suspend proposed rates, direct regulated carriers to make specified uses of the funds generated by a rate increase, when the uses specified are broad in scope, designed to improve service to the public, and calculated to ensure that expenditures are made for the purposes specified by the carriers themselves as justifying the increase. In our view, the Interstate Commerce Act does not leave the Commission powerless to ensure that railroads, collecting increased rates only by the Commission's permission, will devote the revenues to the purposes for which, they say, they needed the money. The district court, we submit, erred in holding otherwise.

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[9] The court upheld the Commission's authority to require reporting of income and expenditures of funds derived from the increase (*id.* at 22a).

1. Railroad plant and equipment is deteriorating rapidly, and it has become clear that every means of improving rail facilities must be utilized if the Nation's railroads are to survive. The industry itself has documented this problem in great detail, which it has pressed upon the Commission.[10] Large quantities of public funds recently have been authorized for expenditures on rail plant and equipment,[11] and many bills now pending before Congress would authorize even greater sums for this purpose.[12] The rail system of the entire Northeast region soon is to be turned over to a new corporation heavily supported by the Government; the Northeast railroads failed, in large measure, because of a vicious circle of deteriorating

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[10] *E.g.*, the "ASTRO Report", *supra* n. 4.

[11] *E.g.*, Pub. L. 94-25, 89 Stat. 90, the "Amtrak Improvement Act of 1975" (May 26, 1975) (authorizing more than $1 billion to be spent over the next 2¼ years for operating and capital expenditures of the National Railroad Passenger Corporation); Pub. L. 93-236, 87 Stat. 985, 45 U.S.C. (Supp. III) 701 *et seq.*, the "Regional Rail Reorganization Act of 1973," (authorizing funds for the development and improvement of a Northeastern rail system under the Consolidated Rail Corporation). See generally *Regional Rail Reorganization Act Cases*, 419 U.S. 102.

[12] *E.g.*, S. 1730, 94th Cong., 1st Sess. (1975), the "Emergency Rail Transportation Improvement and Employment Act of 1975," passed by the Senate (authorizing $700 million for railroad maintenance and improvement and related materials and equipment assistance); H.R. 8672, 94th Cong., 1st Sess. (1975), the "Emergency Rail Transportation Improvement and Employment Act of 1975," pending before the House Committee on Interstate and Foreign Commerce (authorizing $240 million in maintenance and improvements funds to railroads in reorganization, Amtrak, and ConRail).

plant, inability to compete with other modes of transportation, and consequent inability to raise funds to pay for maintenance and capital improvement.

The need for railroads to apply their own funds to maintenance and improvement projects is clear. The railroads—including Chessie—acknowledged and relied upon this in their application for rate increases, and the Commission's orders do no more than attempt to ensure that a portion of the proceeds from that rate increase will be so applied. Only Chessie has challenged that attempt. If the Chessie is correct, it will be impossible, for all practical purposes, for the Commission to ensure that railroads devote revenues to the purposes claimed to justify the increase. The Commission concluded that an increase of more than three percent appeared to be unjust and unreasonable *unless* the new revenues were used for deferred maintenance and capital improvements. Chessie did not dispute this assessment in the district court. The Commission was required to devise some means to ensure that the new revenues were expended for that purpose; if they were expended for any other purpose the rates would be unjust and unreasonable.

2. The Commission's power to impose pre-expenditure controls necessary to ensure that the funds are dedicated to the purposes for which they were sought is conferred by Section 15a(2) of the Act (49 U.S.C. 15a(2)), in conjunction with Section 15(7) (49 U.S.C. 15(7)), which establishes the Commission's power to suspend proposed tariffs. Section 15a(2)

directs the Commission, "[i]n the exercise of its power to prescribe just and reasonable rates," [13] to "give due consideration, among other factors, * * * to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service * * *." The conditions imposed by the Commission in this case make it more likely that the public will receive the "adequate and efficient railway transportation" for the provision of which the increase was authorized. The orders make meaningful the Commission's authority to consider quality of service in determining what is a just and reasonable rate. The Commission could have blocked all increases by suspending under Section 15(7), explaining that it was doing so because there was no assurance the railroads would spend the additional funds for the only purpose that would justify the increased rates. The Commission, we submit, is entitled to use some less intrusive—but more effective—method of exercising its power of supervision under Section 15a(2).

Although the precise question of the scope of the Commission's power to impose conditions under Section 15a(2), in lieu of suspending under Section 15(7), is one of first impression, other courts have interpreted similar statutes to empower regulatory agencies to impose conditions upon their authorization

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[13] Under Section 15a(1), the term "rates" used in Section 15a "means rates, fares, and charges, and all classifications, regulations, and practices relating thereto."

of a fare increase. For example, *D.C. Transit System* v. *Washington Metropolitan Area Transit Commission*, 466 F.2d 394, 412 (C.A.D.C.), held, construing language functionally identical to that of Section 15a(2): "We perceive no legal barrier to an order by the Commission, securely founded upon an evidentiary record, preconditioning a fare raise upon terms calculated to safeguard the public interest in economical, efficient and adequate transportation. [Footnote omitted.] The legislative imposition of a grave responsibility ordinarily carries with it, as a matter of necessary implication, power to employ the means by which it may be discharged." [14] Indeed, as to the effect on the prerogatives of management, the power to deny an increase ultimately is the more coercive and intrusive.

In sum, the Commission has not attempted here

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[14] Numerous state court decisions to the same effect are cited in *D.C. Transit*, *supra*, 466 F.2d at 412, n. 127. These decisions make it clear that a regulatory commission's power to condition an increase upon terms calculated to safeguard the public interest in economical and adequate service depends on the presence or absence of language comparable to the "public interest" standard of Section 15a(2). The Supreme Court of Florida, for example, recently upheld the power of the Florida Public Service Commission to withhold a telephone rate increase pending service improvements. *United Tel. Co. of Florida* v. *Mayo*, 215 So. 2d 609, 610, appeal dismissed, 394 U.S. 995. The court expressly relied upon a statute authorizing the Commission to consider efficiency, sufficiency and adequacy of facilities provided and services rendered (Fla. Stat. Ann. 366.041 (1968)), and overruled a contrary decision rendered prior to enactment of the statute.

to exercise an "unfettered capacity for requisitioning investment of capital" or to require purchases of land and material (cf. *Interstate Commerce Commission* v. *United States ex rel. Los Angeles*, 280 U.S. 52, 70); nor has it tried to order a railroad to supply itself with a certain type of car (cf. *United States* v. *Pennsylvania R.R.*, 242 U.S. 208). The Commission has required carriers to expend funds they said they needed to spend for the purpose they stated. In effect, the Commission has simply held the railroads to their word. The Commission did not assert any broad authority to control management decisions since the decision regarding why and for what purpose additional funds were needed was a decision the railroads themselves made. If the railroads are dissatisfied with the Commission's conditions, they retain the right to decline to increase their rates, thereby escaping the effect of the conditions and returning themselves to the same position in which the Commission could have placed them by suspending under Section 15(7).

3. Chessie argued in the district court that the Commission's orders impinged on the prerogatives of management and would require wasteful use of funds or nonuse of funds. It contended that it has no "deferred maintenance" or "delayed capital improvements," as the Commission has defined those terms; and it requested the district court to set aside the Commission's orders on the ground that they are

arbitrary and unwise. We expect Chessie to repeat those arguments here.[15]

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[15] Although, in the posture of this case, Chessie's argument that the Commission's orders are unwise or misguided is not pertinent, we offer the Court a precis of our views.

The Commission has defined "deferred maintenance" in a way that includes all "accrued deterioration" in a railroad's plant and equipment that makes its service "partially or wholly inadequate." As the district court observed, derailments over the Chessie system increased from 87 in 1964 to 240 in 1973 (App. A, *infra*, p. 15a), an increase that bespeaks "accrued deterioration" of its roadbed. Other profitable railroads have reported to the Commission large amounts of deferred maintenance; the Commission informs us that the Norfolk & Western Railway reported $64,060,000 as of December 31, 1974, the Southern Railway $32,854,000, and the Union Pacific R.R. $8,722,000. The Nation's railroads together reported deferred maintenance of $2,898,000,000 as of June 30, 1974, and over the next six months, operating under the Commission's orders, that backlog had decreased only to $2,792,600,000. There are similar figures for "delayed capital improvements," which are defined as desirable projects for which commercial financing is not available.

Chessie has contended that it has no "deferred maintenance" or "delayed capital improvements" as the Commission has defined those terms; consequently, the sums it collects will be unusable unless it is released from the Commission's orders. Chessie asserts only two grounds for its contention: (1) that it embarked upon a capital improvements program prior to the cut-off date in the Commission's orders, and (2) because it is a solvent railroad, commercial financing is available for its projects, albeit on unacceptable terms. These arguments are insubstantial. Chessie's capital improvements program was approved by its boards of directors on May 13, 1974. Although the Commission's initial cut-off date was June 1, 1974, it has changed that date to January 1, 1974, so that Chessie's capital improvements program qualifies as a program for purposes of the Commission's orders. As to the second point, Chessie's position with respect to the availability of commercial financing is untenable. There is no support for Chessie's view that commercial financing must be *absolutely* unavailable. Commercial financing is "unavailable," for the purposes of the Commission's orders, if the terms of that financing would make it commercially unacceptable to reasonable and prudent managers. The Commission has expressly reserved to the railroads "the management of each railroad in the exercise of its proper and prudent managerial functions" (App. H, *infra*, p. 81a).

The district court did not reach Chessie's arguments in this regard. It held instead that the imposition of *any* condition is beyond the Commission's power. The sole question presented here is thus a question of power, a question that does not turn on the wisdom or the manner of its exercise in the particular facts of this case. We submit that the Commission has the power to require the carriers to expend the additional funds to fulfill the very needs the carriers asserted in justification of the rate increases that generated those funds.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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SEPTEMBER 1975.

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 74-0370-R

[Filed Apr. 22, 1975, Clerk, U. S. Dist. Court, Richmond, Va.]

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, and WESTERN MARYLAND RAILWAY COMPANY, PLAINTIFFS

—*v*—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

(Argued December 20, 1974
Decided April 22, 1975)

Before BUTZNER, Circuit Judge, and MERHIGE and WARRINER, District Judges

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BUTZNER, Circuit Judge:

In this petition for review of a series of orders of the Interstate Commerce Commission in Ex Parte No. 305, *Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974*, the Chessie system lines challenge the power of the Commission to condition the refiling of a rate increase, without investigation or suspension, on the expenditure of revenue derived from the increase in the manner directed by the Commission.[1] We conclude that the Commission lacks statutory authority to order a railroad how to spend its revenue, and we hold that this condition should not be enforced against the Chessie system. Chessie also charges that the Commission unlawfully required it to file certain reports. We hold that the orders to furnish the requested information are incidental to the Commissions' authority to suspend the proposed rate increases and are therefore not reviewable.

I

In April 1974 Chessie and all other railroads, except the Long Island, petitioned the I.C.C. for a 10 percent increase in freight rates. Among the reasons cited for the increase was the statement that "billions of dollars are needed immediately and in the coming decade for maintenance and improvement of the Nation's rail transportation plant." A number

[1] The Chessie system lines consist of the Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railroad Company, and the Western Maryland Railway. For the sake of brevity we shall refer to them as Chessie.

of shippers protested, so the Commission did not allow the carriers to initiate the proposed tariffs on short notice. The railroads again filed for an increase in May. On June 3 the Commission acknowledged the railroads' need for an increase but ruled that "if the schedules were permitted to become effective as filed and without conditions designed to promote service improvements, the increases proposed would be unjust and unreasonable and contrary to the dictates of the national transportation policy." Accordingly, it suspended the proposed tariff and at the same time authorized the railroads to refile, incorporating conditions which would assure that the additional revenue would be expended for capital improvements and deferred maintenance of plant and equipment.[2]

[2] The conditions imposed by the June 3 order are:

"1. On or before August 19, 1974, each carrier shall provide this Commission (a) with an estimate of the costs of deferred plant and equipment maintenance as of June 30, 1974; number and percent of bad order cars by type; and miles of track by class on which slow orders were in effect. The estimate of deferred maintenance should be classified to show amounts for equipment by type of cars, locomotives plant, including yard and running track, and other similar classes of property and facilities; (b) with a report of the annual maintenance and capital expenditures for the years 1971-1973, inclusive, and the 1st and 2nd quarters of 1974. A report of estimated maintenance and capital investments shall be provided for the 3rd and 4th quarters of 1974 and the first two quarters of 1975.

"2. All railroads shall maintain a monthly record of the increased freight revenues derived from the in-

The railroads, including Chessie, then cancelled the prior increase and on June 5, 1974, refiled in accordance with the conditions of the June 3 order. However, on July 18 the Commission clarified its June 3 order. It allowed up to 3 percent of the revenue derived from the rate increase to be applied to higher material and supply costs, other than fuel. It required the railroads to expend the balance of the new revenue, less the income taxes attributable to it, for deferred maintenance and delayed capital improvement. For the purposes of the order, the Commission narrowly defined the term "deferred maintenance" as accrued deterioration producing a severe adverse effect on railroad operations. It also prohibited expenditure of the funds for any capital

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creases by months. The increased freight revenues may be estimated if the procedure for the estimations is explained.

"3. Revenues generated by the increases should be expended for capital improvements and deferred maintenance of plant and equipment and the amount needed for increased material and supply cost, other than fuel. A record of such expenditures shall be maintained on a monthly basis.

"4. At the end of the 3rd, 6th, and 9th months following the effective date of the increases, each carrier shall provide this Commission with an estimate of the freight revenues generated by the increases. Additionally, each carrier shall report the amount of expenditures made for deferred maintenance of plant and equipment, *e.g.*, by type of car, track, cross ties, etc., as well as amounts expended for capital improvements by type of project. Furthermore, each carrier shall report the amount of unexpended funds derived from the authorized increases and how those funds are to be expended."

improvements that had been scheduled or otherwise committed as of June 1, 1974.[3]

Protesting that it had neither deferred maintenance nor delayed capital improvements as defined by the Commission, Chessie petitioned for an amendment to the July 18 order that would allow it to expend the additional funds for any valid corporate purpose. On August 9 the Commission denied Chessie's petition

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[3] The July 18 order defined "deferred maintenance" and "delayed capital improvements" as follows:

"For purposes of this order, deferred maintenance is defined as the accrued deterioration or deficiency in the physical operating condition of railroad track structures, cars and locomotives, and other property used in the provision of transportation service resulting from the failure and/or inability to properly maintain plant and equipment, which produces an adverse effect on railroad operations to an extent that services to shippers have been rendered partially or wholly inadequate and/or has resulted in diminishing the railroads' competitive ability;

"For purposes of this order, delayed capital improvements represent actually planned, specifically identified capital improvements necessary for the provision of adequate or improved transportation service to shippers and which had not been undertaken, scheduled, or otherwise committed because funding or financing was not, or projected to be, available through June 30, 1975. They exclude improvements in progress and those scheduled or otherwise committed and recognized in capital budgets in effect or applicable on June 1, 1974. These capital improvements are further identified as delayed expenditures which would (1) add to or improve the carriers' plant and/or equipment so as to increase its usefulness, capacity, durability and efficiency, and (2) which are capitalizable in the property accounts in accordance with the Commission's accounting regulations; . . ."

but relaxed its order by changing the cut-off date for determining what constituted delayed capital improvements.

Rebuffed by the Commission, Chessie instituted this action on August 15, 1974, and in due course secured an interlocutory injunction restraining the Commission from controlling Chessie's expenditure of its increased revenues.[4] In the meantime, at the instance of other railroads, the Commission reopened the proceedings. After a hearing, in which Chessie declined to participate, the Commission on October 3 modified its orders of June 3, July 18, and August 9 by allowing a railroad to use the increased revenues for new capital improvements if it could show that it could not use the funds for deferred maintenance and delayed capital improvements, as defined by the Commission.[5] Chessie then amended its complaint, alleging that the restrictions on expenditure of revenue, even as modified by the October 3 order, exceeded the Commission's statutory authority.

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[4] No other railroad filed suit against the Commission.

[5] The October 3 relaxation of previous orders was stated as follows:

> "*It is further ordered,* That railroad respondents, if any, which are unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined in this proceeding, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission, Division 2, as above set forth: . . ."

II

At the outset the Commission challenges the jurisdiction of the Court to review the questioned orders. It contends that administrative proceedings involving the suspension of rates are free from judicial review. Consideration of this defense requires examination of the suspension process.

Railroads have always had the right to initiate higher rates, and the Interstate Commerce Act of 1887 did not grant the Commission power to suspend the new charges. Shippers therefore sought injunctive relief while the Commission investigated the lawfulness of the increases. However, the expense of litigation and the courts' lack of uniformity prompted Congress in 1910 to authorize the Commission to suspend a new rate for no more than seven months while it conducted an investigation. The principal cases interpreting the 1910 amendment, codified as 49 U.S.C. § 15(7),[6] are United States v. SCRAP,

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[6] 49 U.S.C. § 15(7) provides in part:

> "Whenever there shall be filed with the Commission any schedule stating a new . . . rate, . . . the Commission shall have . . . authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier . . . , but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, . . . and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier . . . affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule

412 U.S. 669 (1973), and Arrow Transportation Co. v. Southern Railway Co., 372 U.S. 658 (1963). In *Arrow* the Court concluded that Congress intended "to vest in the Commission the sole and exclusive power to suspend and to withdraw from the judiciary any pre-existing power to grant injunctive relief." 372 U.S. at 667. It therefore held that a district Court could not restrain a railroad from charging the proposed rates after the seven-month administrative suspension period, even though the Commission had not completed its investigation. In *SCRAP* the Court held that the exclusive suspension power vested in the Commission by § 15(7) deprived a district court of jurisdiction to forbid the collection of a new rate which the Commission had not suspended.

Arrow and *SCRAP* establish beyond question our lack of jurisdiction to review the provisions of the

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and defer the use of such rate, . . . but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, . . . goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. . . . [T]he Commission may by order require the interested carrier . . . to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier . . . to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified."

June 3 order that suspended the proposed rates. Nor can we enjoin the Commission from permitting the railroads to refile and collect the increased rates. The Commission's discretion in these matters is unbridled, and its decision regarding suspension is unreviewable. *See generally* K. Davis, Administrative Law Treatise 966 (1970 Supp.).

However, lack of power to review certain parts of the Commission's orders does not deny jurisdiction to examine other parts. Congress gave the courts jurisdiction to review "in whole or in part" any order of the Commission. 28 U.S.C. § 1336(a). A condition is considered a separate part of an order for the purpose of exercising this jurisdiction. United States v. Chicago, M. St.P. & P. R.R. Co., 282 U.S. 311, 328 (1931). We turn, therefore, to the suspension power in § 15(7) to determine whether Congress intended to withdraw from the judiciary claims that the Commission has unlawfully conditioned the suspension of rates on compliance with a requirement which it would otherwise have no statutory authority to impose. Section 15(7) mentions only one condition as concomitant to the Commission's power to suspend. The Commission can require the carrier to keep account of the amounts received from an increased rate and to refund any portion that ultimately is found to be unjustified.[7] A suspension order imposing this statutory condition is not subject to judicial review. Port of New York Authority v.

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[7] See footnote 6, *supra*.

United States, 451 F.2d 783, 786 (2d Cir. 1971) (by implication).

The statute's silence about other conditions should not be interpreted as a denial of the Commission's authority to appropriately restrict the exercise of its suspension power in a variety of ways. But when the Commission has selected a condition that is not expressly authorized by § 15(7), the courts have jurisdiction to determine whether it should be set aside because it exceeds the Commission's regulatory powers. Judicial relief is available to curb administrative acts that exceed an agency's statutory authority. In Harmon v. Brucker, 355 U.S. 579, 581 (1958), the Court rejected the defense that certain administrative action was unreviewable, saying:

> "Generally, judicial relief is available to one who has been injured by an act of a government official which is in excess of his express or implied powers. . . . The District Court had not only jurisdiction to determine its jurisdiction but also power to construe the statutes involved to determine whether the [official] did exceed his powers. If he did so, his actions would not constitute exercises of his administrative discretion, and, in such circumstances as those before us, judicial relief from this illegality would be available."

As Leedom v. Kyne, 358 U.S. 184, 188 (1958), explains, in such instances a court does not simply review the agency's action in the same sense that it would review an order falling within the agency's

statutory authority. Instead, the court must measure the order by the statute and if it exceeds the agency's delegated power, the Court must annul it.

We conclude, therefore, that the general rule against judicial review of the Commission's exercise of its suspension power does not deprive the court of jurisdiction. It may hear and determine Chessie's claim that the provisions of the suspension orders that dictate the manner in which the additional revenues shall be used exceed the Commission's statutory powers.

But those provisions of the Commission's orders directing the railroads to supply information about the condition of their facilities, the amount of revenue generated by the rate increase, and the purposes for which it has been or will be expended stand on a different footing. Section 15(7) provides that the Commission "may from time to time suspend" the increased rates. Obviously, the Commission needs, and may demand, accurate, complete information from the carriers so that it can responsibly exercise its power to suspend. Therefore, because the reporting requirements are incidental to the Commission's exclusive power to suspend, they are not reviewable.

III

The Commission next asserts that Chessie is barred from seeking judicial relief because it failed to exhaust its administrative remedies. It bases this defense on the premise that Chessie should have par-

ticipated in the reopened proceedings culminating in the October 3 order, that it should have applied for an exception as allowed by this order, or that it should have sought reconsideration of the order. Chessie responds that when it became apparent that the July 18 order would not permit it to utilize the rate increases allowed by the June 3 order, it promptly moved for exemption. It emphasizes that it filed this suit only after the Commission denied its petition. Chessie explains that it did not join the subsequent petition for reconsideration filed by other railroads and declined to participate in the Commission's rehearing because it feared placing its judicial standing in jeopardy.

We agree with the Commission that Chessie's institution of this action in August did not preclude the Commission from subsequently reopening the hearing at the request of other railroads. The statute authorizing the Commission to reopen its proceedings and to modify its orders does not prevent the Commission from acting, while a petition for review is pending, as long as its subsequent proceedings do not interfere with the suit. 49 U.S.C. § 17(6) and (7). American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 540-42 (1970). Though the Commission conducted its rehearing and entered its October 3 order after this suit was filed, there was no interference. We heard the case after October 3 and consequently have been able to give full consideration to the Commission's post-suit proceedings. In multi-party administrative proceedings, some parties may

seek reconsideration of the agency's final action, while others may seek judicial relief. Both tribunals may then exercise jurisdiction when, as here, they do not work at cross-purposes. Wrather-Alvarez Broadcasting, Inc. v. F.C.C., 248 F.2d 646, 648 (D.C. Cir. 1957).

Contrary to the Commission's position, we conclude that Chessie has exhausted its administrative remedies. Because the Commission's October 3 order reaffirmed its authority over the carriers' expenditure of funds, Chessie could not have gained full relief, even if it were granted an exception on the Commission's terms. Moreover, Chessie did not have to reiterate its claim that the conditions were illegal by moving for reconsideration of the October 3 order. In Skinner & Eddy Corporation v. United States, 249 U.S. 557 (1919), a shipper sued to annul an order on the ground that the Commission had exceeded its statutory authority. In rejecting the contention that the shipper had not exhausted his administrative remedies, the Court said:

> "The contention is that the Commission has exceeded its statutory powers; and that, hence, the order is void. In such a case the courts have jurisdiction of suits to enjoin the enforcement of an order, even if the plaintiff has not attempted to secure redress in a proceeding before the Commission." 249 U.S. at 562.

The Commission relies on Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938), which holds that a district court cannot enjoin a National Labor

Relations Board hearing on the ground that the employer's business is not related to interstate commerce. Since Congress delegated the initial resolution of this factual issue exclusively to the Board, the Court ruled that the employer must exhaust his administrative remedies before challenging the Board's jurisdiction. *Skinner* and *Myers* were written by Mr. Justice Brandeis, and they are not contradictory. In *Skinner* the complaint attacked the statutory authority of the agency to act; in *Myers* it attacked the factual predicate to establish the agency's jurisdiction. Here, Chessie challenges the Commission's statutory authority to supervise the expenditure of its revenue. Consequently, Chessie is not barred from seeking judicial relief, even though it did not pursue administrative relief from the October 3 order.

IV

As its third affirmative defense, the Commission alleges that Chessie is estopped from challenging the legality of the conditions in the June 3 order because it filed for the new rates allowed by this order and has benefited from them. The Commission points out that the joint petition for a rate increase filed by the nation's railroads emphasized the need for funds to maintain and improve tracks and equipment, and that the June 3 order was entered to enable the carriers to meet this exigency. Chessie asserts that it had anticipated its maintenance requirements by embarking on a $300 million capital improvement

program in December 1973, six months before the Commission acted.

We have no doubt that Chessie's facilities require additional maintenance and improvement. For example, in 1973 it had 240 derailments because of defects and failures in its roadway as compared with 87 in 1964, an increase of 176 percent. Chessie's unrefuted need to maintain and improve its property was a factor causing it to join other railroads in seeking a rate increase, but proof of this does not establish that Chessie is estopped from questioning the legality of the Commission's conditions.

When Chessie refiled for the rate increase under the June 3 order, it was not clear that its current improvement program failed to comply with the Commission's order. Only after the Commission clarified its intent and defined its terms in the July 18 order did Chessie's officials become concerned that their program did not meet the Commission's specifications. Chessie did not acquiesce; instead, it immediately challenged the legality of the newly defined conditions. Thus, no action on its part lulled the Commission into withholding its power to suspend. At no time did Chessie represent to the Commission that it would use the new rate increase exclusively for deferred maintenance or delayed capital improvement as defined by the Commission. Nor did it pretend that it would submit to acts it believed to be in excess of the Commission's powers. It is the absence of this dissemblance and the Commission's lack of reliance on any statement or act of Chessie's

that distinguishes this case from F.P.C. v. Colorado Interstate Gas Co., 348 U.S. 492 (1955), and Admiral-Merchants Motor Freight, Inc. v. United States, 321 F.Supp. 353 (D. Colo. 1971), on which the Commission relies. Estoppel is an equitable doctrine, and it should not be lightly imposed to deprive a person of the right to challenge the legality of government action. We therefore hold that Chessie is not estopped from suing to enjoin the Commission.

V

It is the Commission's position on the merits that since it could have unconditionally suspended the rate increase, it has the inherent authority to allow an increase subject to reasonable conditions consistent with the purposes of the Act. For its part, Chessie contends that Commission control over a railroad's revenues is not consistent with the Act.

The starting point for the consideration of these contentions is the undeniable proposition that the Commission can impose conditions that have been expressly or impliedly authorized by law. *See, e.g.*, United States v. SCRAP, 412 U.S. 669, 675 (1973); Port of New York Authority v. United States, 451 F.2d 783, 785-787 (2d Cir. 1971); Algoma Coal & Coke Co. v. United States, 11 F.Supp. 487, 49-394 (E.D. Va. 1935); *cf.* Southern Pacific Co. v. Olympian Dredging Co., 260 U.S. 205 (1922); D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission, 466 F.2d 394 (D.C. Cir.

1972). None of these cases suggest, however, that the Commission's authority to suspend rates enables it to exercise powers which Congress never expressly or impliedly conferred on it. Indeed, it is axiomatic that an administrative agency, a creature of the legislature, cannot exceed its statutory authority. Stark v. Wickard, 321 U.S. 288, 309 (1944). Closer to the point, an agency cannot condition the lawful exercise of its authority on compliance with an illegal proviso. Standard Airlines v. C.A.B., 177 F.2d 18, 20 (D.C. Cir. 1949). We turn, therefore, to the critical question of the case: Has Congress expressly or impliedly authorized the Commission to direct railroads how they shall spend the revenue derived from a rate increase that is subject to the Commission's suspension power?

The Act does not expressly authorize the Commission to condition withholding suspension of a rate increase on how the additional income is spent. As we previously noted, the provision of the Act granting suspension power, § 15(7),* explicitly empowers the Commission to condition the interim allowance of rates on refunds, should the new tariff subsequently be found unlawful. It is silent about other conditions. Therefore, lacking express authority, the Commission relies on implied authority.

Initially, the Act did not authorize the Commission to fix rates. Congress did not confer this power until it passed the Hepburn Act in 1906, which dealt

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* See note 6 and text at note 7, *supra*.

only with maximum charges. The Transportation Act of 1920 granted authority to fix minimum as well as maximum rates.[9] It is a provision of the 1920 Act, now codified as 49 U.S.C. § 15a(2),[10] which the Commission cites as implied authority for its orders. Section 15a(2) prescribes certain factors which the Commission must take into consideration "[i]n the exercise of its power to prescribe just and reasonable rates." Never before has the Commission claimed that this section expands its rate-making power to embrace control over the expenditure of a carrier's revenue. Instead, its decisions have been to the contrary. Shortly after the passage of the Transportation Act of 1920, the Commission held in Missouri-

[9] The Transportation Act of 1920, 41 Stat. 456, included a recapture clause which provided that one half of any income in excess of 6 percent of the value of the carrier's property was to be paid to the Commission for a general contingency fund. The railroads were required to keep a portion of the remainder in a reserve fund. Pub. L. 66-152 §§ 15a(6-8), 41 Stat. 456, 489 (1920). The clause was repealed in 1933, ending the only peacetime control over the railroads' expenditures. Pub. L. 73-68 § 206(a), 48 Stat. 195, 220 (1933).

[10] 49 U.S.C. § 15a(2) provides:

> "(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

Kansas-Texas R.R. Co. v. Kansas City Terminal Ry. Co., 104 I.C.C. 203 (1925), that § 15a did not authorize it to restrain a carrier from expending its revenue on an improvident contract. Construing § 15a, it said:

> "What the provision requires or authorizes us to do is to fix remunerative reasonable rates in circumstances which embrace honest, efficient, and economical management as a condition or limitation. We should have the information in that respect which will aid an effective exercise of our duty and authority, but we are not commanded to insure or empowered to enforce such management, responsibility for which at all times rests upon the carriers." 104 I.C.C. at 224.

The Commission's views about the limitation of its authority remained unchanged until the present controversy. As recently as 1971, the Commission ruled that the development of capital for improving deteriorated railroad facilities is a function of management, "not a measure of the reasonableness of rate levels." Increased Freight Rates 1970 and 1971, 339 I.C.C. 125, 180 (1971).

Since the Commission has not previously conditioned withholding the suspension of rates on control of a railroad's expenditures, no court has considered the precise issue presented by this case. However, in other contexts, courts have uniformly held that the Commission lacks statutory authority to order railroads how to spend their funds. In Missouri Pa-

cific R.R. Co. v. Norwood, 42 F.2d 765 (W.D. Ark. 1930), *aff'd* 283 U.S. 249 (1931), the railroad claimed that it need not comply with a state full-crew law because Congress exclusively occupied this field by the Transportation Act of 1920. This Act, the railroad contended, authorized the Commission to prohibit the wasteful expenditure of a carrier's funds. Rejecting this claim, the district court said:

> "The logical result of this contention, as to grant of power to the Commission, is that Congress conferred the power to supervise carrier expenditures—at least, to the extent of preventing waste or improvidence. The power to do this *directly* would be a decided step in advance of any congressional action before the Transportation Act. This subdivision of this section deals with just one main subject. That subject is the rate of return on property value to be determined and allowed the carriers by the commission. As an element in such determination, the transportation needs of the country are to be considered by the commission. . . . Such provision gives no power of directly supervising carrier expenditures. It provides control *only* through the rate of return allowed by the commission. . . . There is no suggestion in the section as enacted, in the committee reports or in the congressional debates of any direct control by the commission of any expenditures of the carriers . . ." 42 F.2d at 773.

The Supreme Court has held that the Commission does not have the implied power to order railroads

to construct a union station. Writing for the Court in I.C.C. v. United States ex rel. Los Angeles, 280 U.S. 52, 70 (1929), Mr. Chief Justice Taft said:

> "If Congress had intended to give an executive tribunal unfettered capacity for requisitioning investment of capital of the carriers and the purchase of large quantities of land and material in an adverse proceeding, we may well be confident that Congress would have made its meaning far clearer and more direct than in the present meager provisions of the transportation act."

Earlier the Court had ruled that the Interstate Commerce Act did not impliedly authorize the Commission to order a railroad to furnish tank cars for shipping oil. United States v. Pennsylvania R.R. Co., 242 U.S. 208 (1916). Although this case was decided before the enactment of § 15a, the Commission recognizes it as a current precedent. In 1972 the Commission acknowledged that it "has no authority to require a railroad to equip itself with specified types of cars." I.C.C. 86th Annual Report to Congress 23 (1972).

As the Commission points out, none of these cases dealt with the suspension of rates. However, they unmistakenly establish that the Commission has no general power to control a railroad's expenditures. No provision of § 15(7), authorizing suspension of rate increases, implies that the Commission may exercise, as an incident to suspension, the control over expenditures that Congress has otherwise withheld

from it. Lacking statutory authority to exercise this control directly, the Commission cannot accomplish the same result indirectly. T.I.M.E. v. United States, 359 U.S. 464, 475 (1959). Nevertheless, one cannot read the administrative record without recognizing that the Commission's orders are a well-intentioned effort to cope with the vexatious deterioration of track and equipment that saps the ability of the nation's railroads to serve the public adequately. We do not judge the wisdom of the Commission's remedy; rather, our sole function is to determine its lawfulness. We conclude that Congress has not authorized the Commission to control a carrier's expenditure of funds as a condition to withholding the suspension of rates. But we do not determine whether the rates should or should not be suspended without the conditions, for that decision rests with the Commission. United States v. SCRAP, 412 U.S. 669 (1973).

Accordingly, we will permanently enjoin the Commission from restricting Chessie's expenditure of revenues, as it has done in its orders of June 3, July 18, August 9, and October 3, 1974, in Ex Parte No. 305. We will not enjoin the Commission from requiring Chessie to report in accordance with its orders. In view of our disposition of the case, it is unnecessary for us to decide the procedural issues Chessie raises.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 74-0370

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, and WESTERN MARYLAND RAILWAY COMPANY, PLAINTIFFS

—*v*—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

For reasons stated in the opinion of the court, it is ADJUDGED, ORDERED and DECREED:

1. The Commission, its officers, employees, and successors are enjoined from enforcing against the Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railroad Company, and the Western Maryland Railway Company the following provisions of its order of June 3, 1974, as clarified and amended by its orders of July 18 and August 9, and its order of October 3, 1974, in Ex Parte No. 305:

> Revenues generated by the increases should be expended for capital improvements and deferred maintenance of plant and equipment and the

amount needed for increased material and supply cost, other than fuel. (Order, June 3, at 3.)

* * * *

[R]ailroad respondents, if any, which are unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined in this proceeding, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission, Division 2, as above set forth. (Order, October 3, at 5.)

2. The petition for an injunction to restrain the Commission from requiring the reports prescribed by those orders is denied.

3. This case is remanded to the Commission for further proceedings that are consistent with the opinion of the court.

/s/ John D. Butzner, Jr.
United States Circuit Judge

/s/ Robert R. Merhige, Jr.
United States District Judge

/s/ D. Dortch Warriner
United States District Judge

April 22, 1975

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 74-0370-R

[Filed Jun. 20, 1975, Clerk, U. S. Dist. Court, Richmond, Va.]

THE CHESAPEAKE AND OHIO RY. COMPANY, THE BALTIMORE AND OHIO RR. COMPANY, and WESTERN MARYLAND RY. COMPANY, PLAINTIFFS

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the United States of America and the Interstate Commerce Commission, defendants herein, hereby appeal to the Supreme Court of the United States from the Opinion and Final Judgment of this Court filed April 22, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1253.

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CERTIFICATE OF SERVICE

I certify that on this, the 20th day of June, I served copies of the foregoing Notice of Appeal on the following, by first-class mail, postage prepaid:

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/s/ Charles L. Beard
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Assistant U. S. Attorney

APPENDIX D

SERVICE DATE
April 30, '74

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 29th day of April, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974
(Short Notice)

It appearing, That on April 22, 1974, most of the nation's railroads * and certain water and motor carriers having joint rates with those railroads, filed a petition, accompanied by supporting verified statements, requesting the Commission to institute an investigation into the revenue needs of all carriers by railroad operating in the United States, and to make all such carriers respondent hereto, to authorize the filing of a master tariff and connecting link supplements and other necessary tariffs and supplements, fourth-section relief, and modification of all outstanding orders to the extent necessary, increasing present rates and charges within, from, to, and via all territories by 10 percent (subject to unidentified exceptions which may be warranted), to become effective

* The Long Island Rail Road did not join in the petition.

on May 2, 1974, or as soon thereafter as possible, upon not less than 10 days' notice, subject to a refund rule;

It further appearing, That in view of the extraordinary request to make the proposed increase effective on May 2, 1974, or as soon thereafter as possible, upon not less than 10 days' notice, it is necessary to consider that exceptional request separately at this time;

It further appearing, That the proposed 10 percent increase would produce additional revenues of $1.5 billion for all railroads, $505 million in the Eastern District, $272 million in the Southern District, and $723 million in the Western District (excluding the one percent sought by the eastern and western railroads in excess of that authorized on an interim basis and presently pending in Ex Parte No. 303);

It further appearing, That the railroads' rate of return on net investment was 3.08 percent nationally, 0.56 percent in the Eastern District, 5.40 percent in the Southern District, and 4.21 percent in the Western District; and that at the proposed rates and present cost levels the respective estimated rates of return would be 5.27, 2.99, 7.48, and 6.26 percent;

It further appearing, That letters supporting the railroads' request to be authorized to make the proposed increase effective on 10 days' notice have been received from the Secretary of Transportation, the United Transportation Union, and the Brotherhood of Railway, Airline and Steamship Clerks, Freight

Handlers, Express and Station Employees; and that an objection to such request has been received from the National Industrial Traffic League;

It further appearing, That the petition discloses that the railroads reached agreement on the proposal on April 3; that, however, it was not filed with the Commission until April 22, with the request that the increases be permitted to become effective on May 2 on 10 days' notice which would have required action on the petition on the day of filing; that the evidence submitted with the petition consists of 9 voluminous exhibits and 50 verified statements supporting a proposed increase totalling approximately $1.5 billion; and that it was obviously impossible to adequately consider and verify the evidence in the general public interest in less than one day;

It further appearing, That with respect to the request to make the increase effective on May 2, the petitioners claim that through publicity and the *mailing* of copies of the petition and supporting evidence on April 22, the date of filing with the Commission, to the parties in the last general rate increase proceeding, sufficient opportunity has been afforded the shipping public to present its views before May 2; but that, to the contrary, allowing for time in the mails for actual delivery of the petitioners' request and any shipper responses, the remainder of time available for shipper consideration of the proposal would have been wholly inadequate;

It further appearing, That concerning the alternative request to make the increase effective on 10

days' notice as soon as possible after May 2, except for the Penn Central Transportation Company, (George P. Baker, Richard C. Bond, and Robert W. Blanchette, Trustees) and the Lehigh Valley Railroad Company, the emphasis of the arguments in the proposal is on the need for funds for maintenance and capital improvements; and that it is not established that irreparable harm would follow the delay necessary to permit shippers and other interested persons a fair opportunity to present their views;

It further appearing, That, the Penn Central and the Lehigh Valley urge that unless their cash flow is improved their continued operations are in peril; but that, based on monthly, weekly, and daily reports of cash positions of those carriers furnished to the Commission on a continuing basis, it does not appear that their continued operations are threatened in the time necessary to provide for public responses; and that, furthermore, under the Rail Reorganization Act of 1973, funds have been designated for interim relief to railroads in reorganization, therefore,

It is ordered, That the petition to the extent that it requests authority to publish increases on short notice, that is to make the proposed increases effective on 10 days' notice be, and it is hereby, denied. As soon as possible, the Commission shall specify the procedures to be followed with respect to this petition in a subsequent order. In an effort to maintain orderly procedure and to avoid the filing of duplicative representations, interested parties are requested not to file any pleadings either supporting

or objecting to the substance of the petition until the subsequent order has been served.

It is further ordered, That notice of this order be given by serving a copy thereof on each party to the proceeding in Ex Parte No. 303, to the Governor and public utility regulatory body of each State, the Environmental Protection Agency, the Special Assistant to the President for Consumer Affairs, and by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register for publication therein.

By the Commission.

ROBERT L. OSWALD
Secretary

[SEAL]

APPENDIX E

May 3, '74

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 3rd day of May, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

(Authority to File)

It appearing, That, as set forth in some detail in the order herein denying the request for short notice, entered on April 29, 1974, most of the nation's railroads * and certain connecting water and motor carriers seek authority to publish a nationwide general increase of 10 percent in freight rates and charges, subject to unidentified exceptions, and subject to a refund rule;

It further appearing, That in the report in Ex Parte No. 295, *Increased Freight Rates and Charges, 1973, Nationwide*, 344 I.C.C. 589, it was required that in future proposals for general increases by the railroads a showing should be made regarding (1) efforts to update tariffs and (2) efforts to improve service, that while no reference is made to (1) in the petition and accompanying statements, the

* The Long Island Rail Road did not join in the petition.

carriers have been complying with the requirement in the report in Ex Parte No. 295 by filing periodic reports of the progress in tariff updating, and that a showing has been made with respect to the other matter.

It further appearing, That the data accompanying petition shows that the proposed increase would produce additional revenues of $1.5 billion ($505 million in the East, $272 million in the South, and $723 million in the West); and that it would improve the railroads' rate of return from 3.08 to 5.27 percent nationally (from 0.56 to 2.99 in the East, from 5.40 to 7.48 in the South, and from 4.21 to 6.26 in the West);

It further appearing, That, referring to the Commission's reference, in the report in Ex Parte Nos. 265 and 267, *Increased Freight Rates 1970 and 1971*, 339 I.C.C. 125, 181-182, to a rate of return of 6 percent on net investment and the statement that such a return represents what "the respondents must make every effort to attain if they are to be in a position to provide the improved services which will be needed in the future," the petitioners urge that the proposed 10 percent increases, resulting in a national rate of return of 5.27 percent, would be consistent with that position;

It further appearing, That the petitioners contend that they are in urgent need of additional revenue for necessary maintenance and capital investment to prevent deterioration of the properties used to perform the service and to expand service to meet the

demand; that since the filing of the proposed increase in pending Ex Parte No. 303, Increased Freight Rates and Charges, 1974, Nationwide, the price of materials alone has increased by $475 million and other operating expenses by $175 million, and that taxes will increase by $282 million; and that the remaining $568 million to be realized from the proposed increase presumably would be used to improve "the ability of the railroad system to meet the transportation requirement of the county;"

It further appearing, That in consideration of the evidence submitted to show that additional revenue is required to offset inflated prices of materials, to improve maintenance, and to increase net railway operating income to a level indicated by the Commission to be required in the report in Ex Parte Nos. 265 and 267, and especially in view of the need of certain railroads to improve their cash flow within the reasonably near future to continue operations, the railroads should be authorized to file the proposed increase to become effective on not less than 30 days' notice, subject to protests and suspension;

It further appearing, That as previously indicated, the carriers seek a 10 percent increase in their rates and charges, subject, however, to certain exceptions which they have not identified; that since the filing of the petition, official notice is taken of a news item suggesting that some carriers, in certain instances, do not intend to increase their rates and charges on certain commodities at all, and, some carriers, in other instances, intend to apply an increase of less

than 10 percent to certain commodities; and, that in order for the general public to have an overall view of the proposal, the carriers should, upon the filing of the tariffs or schedules implementing the authority herein granted, set forth a complete list of exceptions, if any, to the general proposal, including holddowns, flagouts, and provisions for no increases, and, the special permission order so provides; therefore,

It is ordered, That a proceeding be, and it is hereby, instituted into the revenue needs of the railroads of the United States, and that all common carriers by railroad subject to the Interstate Commerce Act be, and they are hereby, made respondents hereto.

It is further ordered, That in publishing the proposed increase in accordance with the special permission authority hereinafter granted, subject to protest and suspension, the schedules shall be published to become effective on June 5, 1974, upon not less than 30 days' notice, and shall include the refund provision prescribed in said permission.

It is further ordered, That protests and verified statements in opposition shall be filed to reach the Commission on or before May 24, 1974 (12 days prior to the published effective date of the proposed schedules), and replies thereto will be due 5 days thereafter, or on May 29, 1974; that the verified statements will be considered as protests and will be made a part of the formal record, along with those filed by the respondents in support of the proposal. All protests, by wire and otherwise, received previ-

ously will be considered as such. For the Commission's use, the original and 24 copies of all documents to be filed in accordance with this order should be sent to the Secretary, Interstate Commerce Commission, Washington, D.C., 20423, Room 5342, but a lesser number of copies may be filed upon a showing of good cause. One copy of each document shall be served (except that where parties are able to do so, 25 copies should be served) upon the representative of the petitioning railroads, Mr. Thormund A. Miller, American Railroads Building, Room 527, 1920 L Street, N.W., Washington, D.C. 20036.

It is further ordered, That any person or persons believing that the tariff proposal filed hereunder will have a significant effect upon the quality of the human environment are hereby invited to comment upon this matter in any statements that may be filed.

It is further ordered, That the request for fourth-section relief will be considered following the filing of protests and statements in opposition and of replies thereto.

And it is further ordered, That in all other respects the petition be, and it is hereby, denied.

SPECIAL PERMISSION NO. 74-3440

It is ordered, for good cause shown:

1. All petitioning railroads, and water and motor carriers to the extent they have joint rates with said railroads, and their tariff-publishing agents, be, and they are hereby, authorized to depart from the Commission's tariff-publishing rules to publish and file tariffs, to become effective on June 5, 1974, upon not

less than 30 days' notice to the Commission and to the public, providing for increased rates and charges as set forth in the petition.

(a) By publication and filing of a master tariff of increased rates and charges, and supplements thereto, providing increases by means of conversion tables of rates and charges, which shall include, and maintain in effect, a refund provision reading as follows:

> In the event any increases resulting from the application of this tariff exceed the increases subsequently approved or prescribed by the Interstate Commerce Commission, the carriers will refund the difference between the increases resulting from the application thereof and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission with 4 percent interest.
>
> In the event an increase resulting from the application of this tariff is disapproved by the Commission and no increase is authorized, the carriers will refund the full amount of the increases collected with 4 percent interest.

The master tariff shall bear an expiration date not beyond one year after the effective date, which may not be canceled or extended except upon specific authorization of this Commission, and all relief herein expires with that date. The master tariff must initially contain all provisions for application of the

increases (including provisions for no increases, if any) following which (unless suspended) any provisions other than those of a general character may be canceled and transferred to the particular tariffs affected upon a common effective date with appropriate notation to that effect in the master tariff amendment.

The master tariff shall contain provisions stating that the fuel surcharge increases authorized by the Commission, as set forth in a separate table in the master tariff, shall be applied to subjected rates and charges prior to the application of the increases authorized to be filed in Ex Parte No. 305.

(b) By publication and filing of a connecting link supplement to each tariff (to be made subject to the master tariff), connecting such tariffs with the master. Such supplements may be blanket supplements (a common supplement issued to two or more tariffs), provided each copy officially filed is hand marked in the appropriate places as to the supplement number and the I.C.C. number of the tariff it supplements.

(c) By publication and filing of tariffs or amendments to tariffs effective concurrently with the master tariffs and upon the same notice which provide specifically increased rates and charges but which do not result in an increase in charges for transportation and other services greater than those specified in the petition, provided all such publications are identified in the tariffs and made subject to the refund clause worded substantially as in paragraph 1(a) herein.

(d) By publication of provisions in tariffs or amendments thereto subjecting rates and charges therein to the provisions of the master tariff.

(e) By publication and filing of a supplement to Tariff of Surcharges Account Increases in Fuel Costs X-301-C, Traffic Executive Association-Eastern Railroads, I.C.C. No. C-1027, and other agents, providing for the cancellation thereof concurrent with the effective date of the master tariff authorized in paragraph 1(a) herein.

2. (a) The master tariff and supplements thereto, and all other tariffs and amendments to tariffs, that employ the short-form methods authorized herein shall bear the notation:

Form of publication authorized
I.C.C. permission No. 74-3440

(b) Tariffs or amendments to tariffs publishing specifically increased rates or charges hereunder shall bear the notation:

Publication made in accordance
with I.C.C. permission No.
74-3440.

3. Connecting-link supplements authorized herein shall be exempt from the Commission's tariff-publishing rules governing the number of supplements and the volume of supplemental matter permissible.

4. Outstanding orders of the Commission are hereby modified only to the extent necessary to permit the filing of tariff publications containing the proposed increases, and all tariff publications filed are subject to protest and possible suspension or rejection. In that regard, we direct petitioners' attention to our admonitions in prior general increase proceedings concerning maintenance and preservation of existing port relationships. See for example *Increased Freight Rates and Charges, 1972*, 341, I.C.C. 288, 336, and *Increased Freight Rates, 1970 and 1971*, 339 I.C.C. 125, 188. Rate increase tables on grain shall progress in one-half cent increments.

It is further ordered, That notice of this order be given by serving a copy thereof on each party to the proceeding in Ex Parte No. 303, to the Governor and public utility regulatory body of each State, the Environmental Protection Agency, the Special Assistant to the President for Consumer Affairs, and by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register for publication therein.

By the Commission.

ROBERT L. OSWALD
Secretary

[SEAL]

APPENDIX F

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 3rd day of June, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

It appearing, That on May 6, 1974, most of the nation's railroads [1], and certain connecting water and motor carriers having joint rates with said railroads, filed schedules of a nationwide general increase of 10 percent in freight rates and charges [2] under authority of Section 6 of the Interstate Commerce Act and the Commission's Special Permission Order No. 74-3440, of May 3, 1974, said tariff schedules having been filed subject to possible investigation and suspension and bearing an effective date of June 5, 1974;

It further appearing, That by petition and verified statements dated April 22, 1974, as supplemented May 7, 1974, the carriers requested the issuance of orders granting relief from outstanding orders entered by the Commission, relief from Section 4 of the Act, and all other relief necessary to permit the proposed general increase to become effective, subject to the condition that refund be made in the event that any increase (including interim increases) resulting

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[1] Only the Long Island Rail Road did not join in the petition.

[2] Certain exceptions were made to the increase.

from the application of the tariff exceeded the increases subsequently approved or prescribed by the Commission;

It further appearing, That interested parties were permitted to file protests and requests for suspension of the tariff schedules and verified statements in opposition on or before May 24, 1974, and the railroads were permitted to file replies on or before May 29, 1974;

It further appearing, That the Commission having considered the evidence and arguments of the parties as set forth in the protests, verified statements and replies recognizes that the nation's railroads are in need of additional freight revenues to offset recently incurred costs of materials, other than fuel, and to provide an improved level of earnings; that the Commission also recognizes that without the additional revenues to be derived from increased freight rates and charges, the earnings of the nation's railroads would be insufficient to enable them under honest, economical and efficient management to provide adequate and efficient railroad transportation services consistent with the public interest and the national transportation policy;

It further appearing, That the Commission, having reviewed the evidence and arguments of the parties, is convinced that the service provided by the nation's railroads is less than adequate and is in danger of further deterioration detrimental to the public interest, that in order to improve service the railroads must generate additional revenues, and that the in-

creases proposed would, if permitted to become effective, generate additional revenues sufficient to enable the carriers to prevent further deterioration and improve service. However, if the schedules were permitted to become effective as filed and without conditions designed to promote service improvements, the increases proposed would be unjust and unreasonable and contrary to the dictates of the national transportation policy;

And it further appearing, That, insofar as increases are hereinafter authorized, said increases will not have a significant adverse effect upon the quality of the human environment within the meaning of the National Environmental Policy Act of 1969; therefore;

It is ordered, That the operation of the schedules specified below be, and it is hereby, suspended and that the use thereof in interstate and foreign commerce be deferred to and including January 4, 1975, unless otherwise ordered by this Commission;

TARIFF OF INCREASED RATES AND CHARGES X-305, issued jointly by the Western Trunk Line Committee, Agent, its ICC No. A-4931, and other designated agents:

In Tariff X-305:

On Pages 66 to 73,
TABLE 5;
On pages 74 to 81,
TABLE 10;
On pages 82 to 85,
TABLE 10-G;

In Tariff X-305 and Supplement 1:

All reference to TABLES 5, 10 and 10-G wherever such reference appears therein;

It is further ordered, That an investigation be, and it is hereby, instituted into and concerning the lawfulness of all the rates, charges, and regulations which were contained in the suspended schedules, as aforesaid, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant, all the said schedules to be subject to a refund provision as contained in the suspended tariff;

It is further ordered, That the carriers which are parties to this proceeding be, and they are hereby, authorized to cancel the suspended tariff on one day's notice;

It is further ordered, That in the event that the carriers which are parties to this proceeding elect to cancel the suspended tariff, then the carriers which are parties to this proceeding be, and they are hereby authorized to establish upon not less than 15 days' notice to the Commission and the public by filing and posting in the manner prescribed in the Interstate Commerce Act, an increase in rates and charges not to exceed those set forth in the cancelled tariff (to be designated X-305A) except that, in view of the pendency of Ex Parte No. 295 (Sub-No. 1), Increased Freight Rates and Charges, 1973—Recyclable Materials, the said increase is not authorized on the commodities described in paragraph (m) of the general exceptions to tariff No. X-295-A; and

subject to maximum no higher than specified in the suspended tariff of increased rates and charges, X-305, effective June 5, 1974, or in connecting link supplements proposed to be made subject to said tariff, X-305, and in no event to produce greater revenue in connection with any rate or charge on any particular commodity or service than proposed in X-305; the master tariff authorized herein shall republish those provisions not suspended by this order, including tables 3 and 3-G and related provisions, provided that the tables are updated to include surcharge increase that became applicable June 1, 1974, and shall provide for cancellation of Tariff of Increased Rates and Charges X-305, Western Trunk Line Committee, Agent, ICC A-4931, and other designated agents; and subject to the following conditions:

1. On or before August 19, 1974, each carrier shall provide this Commission (a) with an estimate of the costs of deferred plant and equipment maintenance [3] as of June 30, 1974; number and percent of bad order cars by type; and miles of track by class on which slow orders were in effect. The estimate of deferred maintenance should be classified to show amounts for equipment by type of cars, locomotives plant, including yard and running track, and other similar classes of property and facilities;

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[3] The railroad management decision or determination to expend these revenues largely on long deferred maintenance or other capital improvements has been made. See the verified statements of the Chief Executive Officers or Operating Officers of the 17 representative railroads, which statements are a matter of record herein.

(b) with a report of the annual maintenance and capital expenditures for the years 1971-1973, inclusive, and the 1st and 2nd quarters of 1974. A report of estimated maintenance and capital investments shall be provided for the 3rd and 4th quarters of 1974 and the first two quarters of 1975.

2. All railroads shall maintain a monthly record of the increased freight revenues derived from the increases by months. The increased freight revenues may be estimated if the procedure for the estimations is explained.

3. Revenues generated by the increases should be expended for capital improvements and deferred maintenance of plant and equipment and the amount needed for increased material and supply cost, other than fuel. A record of such expenditures shall be maintained on a monthly basis.

4. At the end of the 3rd, 6th, and 9th months following the effective date of the increases, each carrier shall provide this Commission with an estimate of the freight revenues generated by the increases. Additionally, each carrier shall report the amount of expenditures made for deferred maintenance of plant and equipment, e.g., by type of car, track, cross ties, etc., as well as amounts expended for capital improvements by type of project. Furthermore, each carrier shall report the amount of unexpended funds derived from the authorized increases and how those funds are to be expended.

5. The schedules containing the increases authorized herein shall expire with June 30, 1975, unless otherwise ordered by this Commission. The Commis-

sion in authorizing increased rates and charges on interstate traffic herein is mindful and deeply concerned with the inadequacy of the services provided shippers by the respondent railroads. The Commission is cognizant that during the time rail service deteriorated, rail rates have had to be increased as a result of inflation to cover increased wage, fuel material, and interest costs as well as rising payroll taxes.

The Commission has been and continues to be concerned with the low level of earnings by the railroad industry which has contributed to the deferral of maintenance of plant and equipment, the postponement of capital improvements, and the depletion of the industry's net working capital. These factors in combination have caused a serious deterioration of rail service and increased expenses due to slow orders, car shortages, derailments, and shortages of locomotives.

The Commission has previously expressed its dissatisfaction with the evidence introduced by the respondents in general revenue proceedings. In the subject proceeding, the evidence introduced by the railroads is far from satisfactory, especially, for example, the respondents' failure to identify and quantify the costs of deferred maintenance.

Our responsibilities under the Act, *inter alia*, section 15a(2), require that we give consideration to "the need, in the public interest, of adequate and efficient railway transportation *service* at the lowest cost consistent with the furnishing of such *service*; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management

to provide such *service*." (Emphasis supplied) Accordingly, as previously indicated, the Commission intends that revenues generated by increases authorized herein, over and above the amount needed for increased material and supply costs, other than fuel, will be used by the respondents exclusively for reducing deferred maintenance of plant and equipment and delayed capital improvements in order that rail *service* to the shippers will be improved. The Commission expects that the authorized increases will enable the respondents' to expend substantially more for maintenance and capital improvements than in recent years and will evaluate respondents' compliance with this directive. Respondents' failure to apply the increased revenues as heretofore specified will result in the cancellation of these authorized increases. The Commission will determine whether cancellation should be ordered after evaluation of each of the reports required by the conditions set forth in subparagraph 4, of the second ordering paragraph hereof. In any event, on or before June 30, 1975, the Commission will determine whether the increase so authorized should be allowed to expire or be made permanent.

It is further ordered, That in making effective any increases in rates and charges herein authorized, the carriers which are parties to this proceeding be, and they are hereby, required to maintain and preserve all existing port relationships (including those involving Great Lakes and Pacific Coast ports) duly established by order of the Commission or recognized customs of the trade, and to observe the prohibitions of the In-

terstate Commerce Act with regard to unjust discrimination and undue and unreasonable preference and prejudice;

It is further ordered, That copies of any tariff filed hereunder shall be transmitted by first-class mail to all parties at the same time as the official filing at the Commission;

And it is further ordered, That all outstanding orders of the Commission be, and they are hereby, modified to permit the increases authorized herein to become effective.

FOURTH SECTION ORDER NO. 20457

It appearing, That carriers parties to the proceeding applied for relief from the provisions of Section 4 of the Act necessary to establish the rates and charges originally sought; that the increases in rates and charges authorized herein cannot be published and made effective without producing in some instances rates or charges that yield greater compensation in the aggregate for the transportation of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, or greater compensation as a through rate or charge than the aggregate-of-intermediate rates or charges subject to the Act, in contravention of Section 4 thereof; that the increased cost of railroad operation necessitates the increases in rates and charges involved in this proceeding which cannot be made effective without fourth-section relief; that application

of the increased charges to or from more distant points will not result in the establishment of rates to or from more distant points that are not reasonably compensatory; that no protestant adequately opposed issuance of the fourth-section relief sought on the ground that it would be adversely affected by the fourth-section departures that may be created by the increased rates; and that a special case has been presented in which the Commission may authorize relief from the provisions of Section 4:

It is ordered, That carriers subject to the Interstate Commerce Act and parties to said proceeding be, and they are hereby, authorized to establish and maintain the increased rates and charges described herein without observing the provisions of Section 4 of the Act;

It is further ordered, That parties to said proceeding be, and they are hereby, authorized to establish and maintain rates and charges permitted to become effective in this order without observing the long-and-short-haul provisions of Section 4 of the Act in cases arising out of the failure to apply the full increases in rates and charges over interstate routes between points in a single State, in turn caused by the failure of the State authorities to authorize the full increases permitted in this proceeding;

It is further ordered, That in those instances in which rates in contravention of Section 4 are established under authority contained herein, the scheduled containing such rates shall make reference to

this order in the manner required by Rule 28 of Tariff Circular No. 20;

And it is further ordered, That the fourth section relief granted herein shall expire with June 30, 1975.

AMENDMENT TO SPECIAL PERMISSION No. 74-3440, AUTHORIZING CERTAIN DEPARTURES FROM THE COMMISSION'S PUBLISHED TARIFF REGULATIONS

It is ordered, That Special Permission No. 74-3440, be, and it is hereby, amended to permit the establishment of the increases in freight rates and charges authorized by the Commission in this order, subject to the terms, conditions and limitations provided therein.

By the Commission. (Commissioners O'Neal and Clapp dissenting; Vice Chairman MacFarland not participating).

ROBERT L. OSWALD
Secretary

[SEAL]

VIEWS OF COMMISSIONER O'NEAL ON

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

The June 3 order in effect allows the railroads to take the full ten percent surcharge which they seek, despite the fact that our own staff analysis indicates that no more than three percent is justified on the basis of increases in costs since the Commission authorized the latest general rate increase of four percent on an interim basis.

By August 19 we are requiring the railroads to provide an "estimate" of the costs of deferred plant and equipment maintenance. This data requirement is quite loose. Only an estimate is required, and what constitutes "deferred" maintenance is neither clearly defined nor subject to exact measurement. Most railroads have an optimum goal of a high level of maintenance of their facilities, although in fact they may be able to operate efficiently at a level of maintenance far short of that. The gap between present maintenance performance and whatever level of maintenance the carrier wishes to posit can be used to define the area of "deferred" maintenance, and this area may be arbitrarily expanded or contracted depending on the level of maintenance the carrier assigns itself as a goal. Thus the "cost" attributed to deferred maintenance can be varied almost at will.

No evidence is required by the Commission as to the second major non-cost related justification behind the ten percent increase, the need to attract capital.

The Commission's economists are of the view that there are several railroads financially able to make capital expenditures and capable of raising funds in the private capital market. The problem is accentuated because of the financial plight of certain marginal and bankrupt roads. Yet the financial data which they believe should be produced regarding the need and ability of the various railroads to attract capital is not required by the June 3 order.

With reference to this increase the Commission's own staff experts believe the Commission should require each railroad to provide a detailed explanation of revenue need and a plan for applying revenues derived from rate increases based on that need *before* authorizing additional increases.

The June 3 order puts the cart before the horse. It authorizes the increases and requires evidence later. The level of data required is not as detailed or extensive as it should be. The railroads should be required to justify increases before they get them, not afterward. Vague, general allegations as to need for additional revenue do not constitute adequate justification.

The June 3 order does provide a sanction for carriers who take the increase and do not apply it for the purpose for which it was granted. Such increases may be cancelled and refunds may be ordered. However, given the interrelated nature of an ex parte

general rate increase, it will be extremely difficult to cancel part of the increase once granted. Therefore the sanction appears to be unwieldy and potentially unworkable. The result is that what teeth appear to exist in the order may prove to be false.

The order provides a compliance monitoring device by providing that the revenues generated by the increases should be expended for deferred capital improvements and maintenance of plant and equipment, and requires that records be kept. However, no provision is made to assure that other revenues now being expended or projected for maintenance and capital improvements will not be diverted to other spending. If a net increase in expenditures for the designated purpose does not result, all the reporting and compliance machinery are a waste of everyone's time and energy.

In addition, the railroads did not comply with a number of the requirements laid down in prior general increase proceedings. They did not show how much of prior authorized increases they have actually taken, as required by the Commission in Ex Parte No. 295. They only partially complied with the interim guidelines set forth in Ex Parte No. 281, for the submission of cost and revenue data. And they did not provide detailed background material and work papers in this proceeding.

I would have approved a 2 percent interim increase and would have required the railroads to submit detailed plans as a condition precedent to receiving any increases above 2 percent. We would thereby have

taken advantage of this opportunity to foster giant strides toward improved rail service. The order I would have approved would hopefully be self-executing in nature, and designed to make achievement of the goal of improved service more certain.

Since 1967 the Commission has allowed rail across the board increases totalling more than 60 percent (excluding such special increases as those for mechanical protection service and the 10% grain increase authorized this year). In each of those cases the Commission has admonished the carriers to improve service. However, the carrier's service reports to the Commission have been practically useless and, not surprisingly, rail service has gone steadily downhill. The time to begin changing the future is now. We cannot expect carrier compliance with any of our admonitions without developing the necessary incentives or fashioning *effective* sanctions.

APPENDIX G

SERVICE DATE
Jul. 22, 1974

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 18th day of July, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974 (REPORTING RQUIREMENTS)

It appearing, That pursuant to order dated June 4, 1974, most of the Nation's railroads established increases in rates and charges, effective June 20, 1974, subject to conditions specified in said order;[1]

It further appearing, That the petitioning rail carriers by refiling of the tariff of increased rates and charges have accepted the conditions imposed by this Commission in ordering paragraph four of its order served June 4, 1974, which provided that the funds generated by the authorized increases, over and above the increased costs of materials and supplies other than fuel, shall "be used by the respondents exclusively for reducing deferred maintenance of plant and equipment and delayed capital improvements in order that rail service to the shippers wil' be improved;"

[1] The Long Island Rail Road did not join in the increases and is not subject to the conditions hereinafter set forth.

For purposes of this order, deferred maintenance is defined as the accrued deterioration or deficiency in the physical operating condition of railroad track structures, cars and locomotives, and other property used in the provision of transportation service resulting from the failure and/or inability to properly maintain plant and equipment, which produces an adverse effect on railroad operations to an extent that services to shippers have been rendered partially or wholly inadequate and/or has resulted in diminishing the railroads' competitive ability;

For purposes of this order, delayed capital improvements represent actually planned, specifically identified capital improvements necessary for the provision of adequate or improved transportation service to shippers and which had not been undertaken, scheduled, or otherwise committed because funding or financing was not, or projected to be, available through June 30, 1975. They exclude improvements in progress and those scheduled or otherwise committed and recognized in capital budgets in effect or applicable on June 1, 1974. These capital improvements are further identified as delayed expenditures which would (1) add to or improve the carriers' plant and/or equipment so as to increase its usefulness, capacity, durability and efficiency, and (2) which are capitalizable in the property accounts in accordance with the Commission's accounting regulations;

For purposes of this order, expenditures for deferred maintenance and delayed capital improve-

ments will be deemed to be expenditures in excess of the maintenance and capital expenditures which have been budgeted for the 3rd and 4th calendar quarters of 1974 and estimated expenditures which would normally be budgeted for the 1st and 2nd calendar quarter of 1975 providing the estimates for these two calendar quarters equal or exceed the average level of maintenance and capital expenditure for the first six months of the years 1971-1974, inclusive on a current dollar basis.

It further appearing, That the said order requires each carrier on or before August 19, 1974, to provide this Commission with certain estimates of the costs of deferred plant and equipment maintenance and related information as of June 30, 1974, as well as a report of the annual maintenance and capital expenditures for the years 1971-1973, inclusive, the 1st and 2nd calendar quarters of 1974, and estimated maintenance and capital investments for the 3rd and 4th calendar quarters of 1974, and the first two calendar quarters of 1975;

It further appearing, That the said order requires the railroads to maintain a monthly record of the increased revenues derived from the increased rates; and, that said increases as well as expenditures thereof be reported to this Commission at the end of the 3rd, 6th, and 9th months following the effective date of the increases;

And it further appearing, That to assure consistency and comparability in said reports, records

and estimates, it is necessary to provide implementing instructions;

Wherefore, and for good cause:

It is ordered, That the accounting requirements set forth in Appendix 1 hereto, shall be implemented by all railroads which are parties to this proceeding and for whose account TARIFF OF INCREASED RATES AND CHARGES, X-305-A, and supplements thereto, are applicable.

It is further ordered, That class I line-haul railroads, as above specified, are directed to file certified data and information required by this order;[2]

It is further ordered, That subparagraph number 4 of ordering paragraph four be changed to read:

"4. On or before the fifteenth day of the second month following the end of the third and fourth calendar quarters of 1974 and the first and second calendar quarters of 1975, each class I line-haul railroad shall provide this Commission with an estimate of the freight revenues generated by the increases; and estimate of the costs of deferred plant and equipment maintenance; number and percent of bad order cars by type;[3] and miles of track by class

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[2] The data should be furnished individually by carrier and then summarized by district, and nationwide; the methods used to deprive the estimates must be reflected, including assumptions used; and all underlying workpapers must be made available to the Commission upon request.

[3] Type of car as used herein includes box, refrigerator, gondola, hopper, covered hopper, flat, company service cars, and others.

on which slow orders were in effect. The report for the third quarter of 1974 should include an estimate of the freight revenues generated by the increases for the period of June 20, 1974, through June 30, 1974. Additionally, each carrier shall report the amount of expenditures made for deferred maintenance of plant and equipment, e.g., by type of car, track, crossties, etc. as well as amounts expended for delayed capital improvements by type of project. Further each carrier shall report the amount of unexpended funds derived from the authorized increases and how these funds are to be expended."

It is further ordered, That up to 3 percentage points of the 10-percent authorization may be applied to increased material and supply costs, excluding fuel, provided such costs have been incurred. Of the remaining amount of increased revenues, increased income taxes may be excluded in determining the balance of the funds to be applied to deferred maintenance and delayed capital improvements in accordance with the methods outlined in Appendices 6 and 7 hereto;

It is further ordered, That on or before August 19, 1974 each of the class I line-haul railroads embraced by this order shall submit to this Commission a report showing for each month from October 1, 1973 to June 30, 1974, the amount of increase or decrease in the cost of materials and supplies, other than fuel, due to price changes. Moreover, the amount of increase or decrease reflected by month for each quarter thereafter shall be included in the railroads'

quarterly reports required in this proceeding. Such increases may be estimated if the procedures for the estimations are explained in the report to the Commission;

It is further ordered, That the costs of deferred maintenance and delayed capital improvements shall be estimated on the basis of wage rates, prices of materials and supplies, and maintenance operation procedures in effect June 30, 1974;

It is further ordered, That each class I line-haul railroad is directed to file the following data and information by August 19, 1974, with this Commission:

a. For the period January 1, 1971 through June 30, 1974, by calendar quarters:

(1) Actual expenditures for the maintenance of plant and equipment in accordance with the accounts listed in Appendices 2 and 3.

(2) Capital expenditures in accordance with accounts listed in Appendix 4.

(3) Cost and numbers of physical units for ties and rails in accordance with the accounts shown in Appendix 5.

b. As of June 30, 1974;

(1) The amount of deferred maintenance of plant and equipment by type of car, locomotives, plant, including yard and way switching track and running track, and other similar classes of property and facilities. The estimate should in-

clude total costs and physical units. A separate submission of deferred maintenance of segments of lines subject to pending applications for abandonment shall be submitted.

(2) The amount of delayed capital improvements in accordance with accounts listed in Appendix 4.

(3) The number and percent of bad order cars by type of car.

(4) Number of locomotives owned and leased and number in service.

(5) The number of slow orders and the number of miles of track by class on which slow orders were in effect. Slow orders placed during routine maintenance should not be included. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

c. For each of the four calendar quarters, July 1, 1974 through June 30, 1975, each reporting carrier shall disclose:

(1) Estimated revenues to be derived from the Ex Parte No. 305 increases in accordance with Appendix 6.

(2) Estimated total expenditures for maintenance of plant and equipment in accordance with the accounts listed in Appendix 2 and Appendix 3 and estimated capital expenditures in accordance with the

accounts listed in Appendix 4, in terms of July 1974 dollars. Show separately the amount of increased revenues to be obtained from the authorized increases which will be applied to these expenditures.

(3) If conditions warrant, revised estimates for the first two calendar quarters of 1975 may be resubmitted in light of final budget determinations.

It is further ordered, That the individual railroads provide this Commission on or before November 15, 1974, February 15, 1975, May 15, 1975, and August 15, 1975, the following data and information as of the close of the calendar quarter:

a. Freight revenues generated by the increases authorized by this Commission's order of June 4, 1974, in the format shown in Appendix 7. The filing for the calendar quarter ending September 30, 1974, should also include a separate disclosure of the revenues generated from Ex Parte No. 305, for the period of June 20, 1974, through June 30, 1974, in a manner consistent with that described in Appendix 7 hereto.

b. Total actual expenditures for the maintenance of plant, equipment and expenditures for capital improvements in accordance with the accounts listed in Appendices 2, 3, and 4, and the portions thereof representing applications of the Ex Parte No. 305 increases.

c. Cost and numbers of physical units for ties and rails in accordance with the accounts shown in Appendix 5.

d. The number and percent of bad order cars by type.

e. The number of slow orders and the number of miles of track by class on which slow orders were in effect.

f. Deferred maintenance of plant and equipment and delayed capital improvements.

g. A report as to anticipated expenditures of the balance of the funds in Account 716, Capital and Other Reserve Funds.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy in the office of the Commission's Secretary and by filing a copy with the Director, Office of the Federal Register, for publication in the Federal Register.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission.

ROBERT L. OSWALD
Secretary

[SEAL]

EX PARTE NO. 305

Accounting Instructions

1. *Funds Realized from Increased Freight Charges*

a. The portion of the funds representing up to 3 percentage points of the 10-percent authorization, applicable to increased material and supply cost, other than fuel, shall be included in account 701, Cash.

b.1. The remainder of the funds representing the portion applicable to deferred maintenance and delayed capital improvements, shall be segregated in account 716, Capital and Other Reserve Funds. These funds shall be reduced by the amount of any additional Federal, State or other *income taxes paid as the result of increasing taxable income by inclusion of the related increased freight charges.* Taxable income should include the effect of applicable tax benefits. No income tax deduction shall be made in cases where the accounting carrier files a separate income tax return or is included in a consolidated return but incurs no actual income tax liability.

2. The unexpended portion of the funds remaining in account 716, Capital and Other Reserve Funds, may be invested in Government bonds or similar interest-bearing temporary investments. Thereafter the interest income received from such investments shall be included in account 716 as part of the segregated funds. The interest received shall be reduced by the amount of any additional Federal, State or other in-

come taxes paid as a result of increasing taxable income by inclusion of the related interest earnings.

3. Account 716, Capital and Other Reserve Funds, shall be maintained in sufficient detail so as to show separately (1) amounts received and expended monthly, allocated between deferred maintenance, delayed capital improvements, and income taxes, (2) income resulting from investment of such funds, and (3) the balance at the end of each month.

2. *Revenue Derived from Increased Freight Charges*

a. The total amount of revenues derived from the increased freight charges shall be included in account 101, Freight, or other appropriate revenue account. The increased freight revenues may be estimated if the procedure for the estimation is explained.[1]

b. Account 101, Freight, as well as other revenue accounts, shall be maintained in sufficient detail to enable separate reporting of the total amount of revenues derived monthly from the increased freight charges applicable to the allowance for increased material and supply cost, other than fuel, increased income taxes, and the remainder for deferred maintenance and delayed capital improvements.

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[1] Although not adopted by this Commission, attention is directed to a Bureau of Economics' report, *Guidelines for the Presentation of the Results of Sample Studies*, Statement No. 71-1, February, 1971, available from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402, price 50 cents.

3. *Supporting Records*

Records shall be maintained so as to furnish readily full information to support the amounts for each entry recorded in account 701, Cash, account 716, Capital and Other Reserve Funds, account 101, Freight, and other appropriate accounts, which relate to the increased freight charges. The information shall be of sufficient detail to permit ready identification, analysis and verification of all the relevant facts, including the basis used for determining the amounts recorded for the increased freight charges.

Listing of Selected Maintenance of Way and Structures Accounts
(dollars in thousands)

Account Number	Account Title	Yard Switching Tracks	Way Switching Tracks	Running Tracks	Total
201	Superintendence	XXX	XXX	XXX	$—
202	Roadway maintenance	$	$	$	$
212	Ties				
214	Rails				
216	Other track material				
220	Track laying and surfacing				
206, 208, 210, 218, 221	Other track accounts				
	Sub total	$—	$—	$—	$—
227	Station and office buildings				$—
235	Shops and engine houses				$
247	Communication systems				
249	Signals and interlockers				
269	Roadway machines				
271	Small tools and supplies				
277	Employees' health and welfare benefits				
227-282, excluding above and 266, 267	Other maintenance accounts				
	Sub total				—
278	Maintaining joint tracks, yards, and other facilities—Dr.				$—
279	Maintaining joint tracks, yards, and other facilities—Cr.				
	Sub total				—
					$—
Total of above					$—
266	Road property—depreciation				$—
267	Retirements—road				$—
	Total				$—
	Grand Total—Maintenance of way and structures				$—
	Total—Freight expense				$—
	Total—Passenger expense				$—

EX PARTE NO. 305

Listing of Selected Maintenance of Equipment Accounts
(dollars in thousands)

Account Number	Account Title	Total
301	Superintendence	$
302	Shop machinery	
311	Locomotive—repairs	
	yard	
	other	
314	Freight train cars—repairs	
317	Passenger train cars—repairs	
335	Employees' health and welfare benefits	____
	Sub total	$
304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339	Other maintenance accounts	____
	Sub total	$____
336	Joint maintenance of equipment expenses—Dr.	
337	Joint maintenance of equipment expenses—Cr.	____
	Sub total	$
305, 330, 331	Depreciation and Retirements	____
	Grand Total—Maintenance of equipment	$
	Total freight expenses	$
	Total passenger expense	$____

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EX PARTE NO. 305

List of Selected Capital Investments
(Dollars in Thousands)

Account		Expenditures for Original Road and Equipment and Road Extensions	Expenditures for Purchase of Existing Lines, etc.	Expenditures for Additions and Betterments	
				Owned Property	Leased Property
(1)		(2)	(3)	(4)	(5)
(3)	Grading	$	$	$	$
(6)	Bridges, trestles, & culverts				
(8)	Ties				
(9)	Rails				
(10)	Other track material				
(11)	Ballast				
(12)	Track laying and surfacing				
(20)	Shops and enginehouses				
(25)	TOFC/COFC terminals				
(26)	Communication systems				
(27)	Signals and inter lockers				
(29)	Power plants				
(37)	Roadway machines				
(44)	Shop machinery				
(45)	Power-plant machinery				
xx	All Other Road				
xx	Total Road Expenditures	$____	$____	$____	$____
	Equipment				
(52)	Locomotives	$	$	$	$

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(53)	Freight-train cars				
(55)	Highway revenue equipment				
(57)	Work equipment				
xx	All Other Equipment				
xx	Total Equipment Expenditures				
xx	Total General Expenditures				
(80)	Other elements of investment				
(90)	Construction work in progress				
xxx	Grand Total—All Investment Accounts	$	$	$	$

EX PARTE NO. 305

Report of Ties and Rails
(Costs in thousand dollars)

Account		
	Total costs of ties laid for:	
	A. Replacement of:	
513	(1) cross ties	$
513	(2) switch & bridge ties	
	B. Additional track, etc.:	
514	(1) cross ties	
514	(2) switch & bridge ties	
	Total cost of rails laid for:	
	A. Replacement of:	
515	(1) running, etc.	
515	(2) yard, etc.	
	B. Additional track, etc.:	
516	(1) running, etc.	
516	(2) yard, etc.	
	Total ties laid for:	
	A. Replacement of:	
513	(1) cross ties (# of ties)	
513	(2) switch & bridge ties (# of feet)	

	B. Additional track, etc.:	
514	(1) cross ties (# of ties)	
514	(2) switch & bridge ties (# of feet)	
	Total rails laid for:	
	A. Replacement of:	
515	(1) running, etc. (# of tons)	
515	(2) yard, etc. (# of tons)	
	B. Additional track, etc.:	
516	(1) running, etc. (# of tons)	
	(2) yard, etc. (# of tons)	

EX PARTE NO. 305

Estimated Revenues
To Be Obtained

_____ Quarter, 197__

_____ Railroad

1. Estimated Freight Revenues including Ex Parte No. 305	$
2. Estimated ton-miles	
3. Estimated Revenue per ton-mile (1 ÷ 2)	$
4. All other revenues—estimated including Ex Parte No. 305	$
5. Total Estimated Revenues including Ex Parte No. 305 (1 + 4)	$
6. Total Estimated Additional Revenues from Ex Parte No. 305	
7. Total estimated revenues excluding Ex Parte No. 305 (5 − 6)	$
8. Estimated increase in costs of material and supplies, other than fuel (not to exceed 3 percentage points of the 10-percent authorization)	
9. Allowance for increased income taxes [1]	
10. Estimated yield to be applied to deferred maintenance and delayed capital expenditures [6 − (8 + 9)]	$

[1] Estimated Income taxes should include the effect of applicable tax benefits. Tax allowance shown on line 9 is to be on an incremental basis and determined as follows:

a. Income Taxes based on estimated revenues on line 5	$
b. Income Taxes based on estimated revenues on line 7	
c. Allowance for increased income taxes a − b	$

NOTE: Fully explain the methodology employed in arriving at the revenue data shown on lines 1, 4 and 6. (See Footnote 1 of Appendix 1)

EX PARTE NO. 305

Revenues Obtained

_____ Quarter, 197__

_____ Railroad

1.	Actual Freight Revenues incl. Ex Parte No. 305	$
2.	Actual ton-miles	_____
3.	Revenue per ton-mile (1 ÷ 2)	$
4.	All other revenues—including Ex Parte No. 305	$_____
5.	Total Revenues including Ex Parte No. 305	$
6.	Total Additional Revenues from Ex Parte No. 305	_____
7.	Total revenues excluding Ex Parte No. 305 (5 − 6)	$
8.	Increase in costs of material and supplies, other than fuel (not to exceed 3 percentage points of the 10-percent authorization)	
9.	Allowance for increased income taxes [1]	_____
10.	Actual yield to be applied to deferred maintenance and delayed capital expenditures [6 − (8 + 9)]	$

[1] Estimated Income Taxes should include the effect of applicable tax benefits. Tax allowance shown on line 5 is to be on an incremental basis and determined as follows:

a. Income Taxes based on revenues on line 5 ..... $

b. Income Taxes based on revenues on line 7 ..... _____

c. Allowance for increased income taxes a − b ..... $

NOTE: Fully explain the methodology employed in arriving at the revenue data shown on lines 1, 4 and 6. (See Footnote 1 of Appendix 1)

EX PARTE NO. 305

Funds Segregated in Account 716

		This Quarter	Cumulative
1.	Balance at beginning of quarter	xxx	$
2.	Funds received from increased revenues	$	xxx
3.	Income from investment of funds	_____	xxx
4.	Total (sum of 2 and 3)	$	xxx
5.	Income taxes paid on funds received and income from investments	_____	xxx
6.	Total addition to account 716 (4 minus 5)	xxx	_____
7.	Total (sum of 1 and 6)	xxx	$
8.	Funds expended:		
9.	a. Deferred maintenance	$	xxx
10.	b. Delayed capital improvements	_____	xxx
11.	Total expenditures (sum of 9 and 10)	xxx	_____
12.	Balance in account 716, , 19__ (7 minus 11)	xxx	$

APPENDIX H

SERVICE DATE
Aug. 12, 1974

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 9th day of August, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974
(Reporting Requirements)

Upon consideration of the record in the above-entitled proceeding, the orders dated June 3, 1974, and July 18, 1974, and of:

(1) Petition filed July 18, 1974, by the Construction Aggregate Rail Shippers Conference, Inc., (CARS), for modification of the June 3, 1974, order making more definite and certain the requirement that revenue increases be expended by the railroads for capital improvements and deferred maintenance;

(2) Petition filed July 31, 1974, on behalf of railroad respondents for clarification and modification of the order dated July 18, 1974;

(3) Separate petition filed July 30, 1974, by the Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railroad Company, and Western Maryland Railway Company (Chessie System), for reconsideration and amendment of the order dated July 18, 1974;

(4) Petition filed July 30, 1974, by the Trustees of Penn Central Transportation Company, Debtor, (Penn Central), for reconsideration and modification of the order dated July 18, 1974;

(5) Petition filed July 12, 1974, by the American Short Line Railroad Association (Short Lines) for modification of the order dated June 3, 1974;

(6) Replies filed July 22 and August 1, 1974, by Diamond Crystal Salt Company and The National Industrial Traffic League, respectively, in opposition to relief sought by Short Lines;

(7) Reply filed August 7, 1974, by railroad respondents in opposition to CARS' petition for modification; and

It appearing, That petitioner, CARS, in (1) above seeks modification of the June 3, 1974, order to require, as a condition of the authority granted for the increases in rates and charges, that at least 50 percent of the increased revenue derived from traffic using open-top equipment, including construction aggregates, be devoted to the purchase or rebuilding of suitable equipment for the movement of such traffic and that these capital improvement expenditures must be in addition to expenditures in a base period prior to the entry of the order dated June 3, 1974;

It further appearing, That the railroad respondents in (2) above, seek modification and clarification of the order dated July 18, 1974, in the following respects:

(1) Elimination of the exclusion of improvements in progress and those scheduled or otherwise committed and recognized in capital budgets in effect or applicable on June 1, 1974, or

(2) Substitution of January 1, 1974, for June 1, 1974, in line 8 of paragraph 4 of the order;

(3) Modification of paragraph 5 of the July 18, 1974, order by deleting reference to estimated expenditures which would normally be budgeted for the first and second calendar quarter of 1975 and substitution therefor of the average amount of maintenance and capital expenditures for the first six months of the years 1971-1974;

(4) Interpretation of paragraph 5 of the July 18, 1974, order as meaning that the excess of expenditures for maintenance and capital programs over the referenced bases is, prima facie, allowable as deferred maintenance or delayed capital improvements, assuming the changes requested in (2) and (3) above, are granted;

(5) Modification of the definition of deferred maintenance in the third paragraph of the July 18, 1974, order to include deferred maintenance programs which would result in improved service;

(6) Modification of the definition of delayed capital improvements by adding the following at the end of the first sentence, in paragraph 4 of said order, "on a basis acceptable to prudent management," and to embrace new capital improvement programs required by changes in traffic levels or traffic mix; and

(7) Postponement of the August 19, 1974, report filing date for material regarding the identification of maintenance and capital programs and certain data which must be estimated for 30 days following the disposition of the respondents' petition;

It further appearing, That petitioner, Chessie System, in (3) above, seeks to amend the July 18, 1974, order by adding a new ordering paragraph permitting a railroad to expend the funds generated by the authorized increases for any valid corporate purpose if it should have no deferred maintenance or delayed capital improvements as defined in the order and for postponement of the August 19, 1974, reporting date pending disposition of the Chessie System's petition;

It further appearing, That petitioner, Penn Central, in (4) above, seeks modification of the July 18, 1974, order to permit railroads in reorganization to transfer funds segregated in Account 716, Capital and Other Reserve Funds, to Account 701, Cash, if necessary, to meet cash requirements for continued operations;

It further appearing, That petitioner, Short Lines, in (5) above, seeks modification of June 3, 1974, order to relieve other than class I line-haul railroads from the record keeping and reporting requirements imposed therein;

It further appearing, That the Commission has consistently expressed its full intention that the authorized increases, over and above the increased costs of materials and supplies, other than fuel, shall be used by the respondents exclusively for reducing deferred maintenance of plant and equipment and de-

layed capital improvements in order that rail service to the shippers will be improved;

It further appearing, That while the Commission intends that the authorized increases shall be used for deferred maintenance and delayed capital improvements, it leaves to the railroad managements' decision how the funds segregated in accordance with the July 18, 1974, order shall be applied to expenditures for the various specific items of equipment and other properties;

It further appearing, That as used in the definition of deferred maintenance, "wholly or partially inadequate" in relation to services to shippers has reference to the rule of ratemaking, cited in the order of June 3, 1974, authorizing the rate increases, which requires, *inter alia*, our consideration of "the need, in the public interest, of *adequate* and efficient railway transportation service at the lowest cost consistent with the furnishing of *such service*; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide *such service*" [Emphasis added];

It further appearing, That the definitions of deferred maintenance and delayed capital improvements provided in said order particularly reserves to the management of each railroad in the exercise of its proper and prudent managerial functions the determination of the extent to which these conditions exist in respect to their properties;

It further appearing, That the petition and verified statements of railroad officials seeking the increases authorized herein are replete with references to the need for revenues to provide funds for great, but unspecified, amounts of deferred maintenance and delayed capital improvements;

It further appearing, That the accounting and reporting requirements as defined and specified in the order of July 18, 1974, except to the extent herein modified, are necessary for the Commission to be informed about the extent of deferred maintenance and delayed capital improvements which must be overcome to provide adequate and improved service to shippers, as specifically identified as of June 30, 1974, by railroad management;

It further appearing, That without such specific information, the Commission would have no reasonable basis for determining whether the authorized increases were being applied as intended, whether cancellation should be ordered after evaluation of each of the required reports, and whether on or before June 30, 1975, the increases should be allowed to expire or be made permanent;

It further appearing, That certain railroads, as asserted in the respondents' petition, may have anticipated authorization of the increases by initiating improvement projects, or scheduling or otherwise committing and recognizing them in capital budgets prior to June 1, 1974, and if such were the circumstances and the projects otherwise qualify as delayed capital improvements, it would be consistent with the Commission's intention that the authorized increases could be applied thereto;

It further appearing, That the President of Penn Central in his verified statement in this proceeding last April asserted that "On an annual basis, Penn Central, after relieving the pressures of a chronic cash deficit, would allocate more than $100 million of the total increased revenue of the $170 million to stepped-up track work and equipment repairs", and in view of the accrued deterioration in the Penn Central's plant and equipment, the relief requested does not appear warranted at this time;

And it further appearing, That the Short Lines have already been granted relief from the reporting requirements and, in the absence of the record keeping requirements, no means would be available to assure that the increases were applied as intended by the Commission;

Wherefore, and for good cause:

It is ordered, That the date, "June 1, 1974" in the fourth paragraph of the July 18, 1974, order shall be deleted and "January 1, 1974," be, and it is hereby, substituted therefor:

It is further ordered, That the filing date in the seventh ordering paragraph of the order, "August 19, 1974," shall be deleted and "September 3, 1974", be, and it is hereby substituted therefor, and that the original and fourteen (14) copies of each report be filed with the Bureau of Accounts, Interstate Commerce Commission, Washington, D. C. 20423.

It is further ordered, That, in all other respects, the petitions in (1), (2), (3), (4), and (5) be, and they are hereby, denied.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy in the office of the Commission's Secretary and by filing a copy with the Director, Office of the Federal Register, for publication in the Federal Register.

By the Commission.

ROBERT L. OSWALD
Secretary

[SEAL]

APPENDIX I

SERVICE DATE
Aug. 22, 1974

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 21st day of August, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974.
(Reporting Requirements)

Upon consideration of the record in the above-entitled proceeding, the orders dated June 3, 1974, July 18, 1974 and August 9, 1974, and of:

(1) Petition filed August 5, 1974, by the Chicago and North Western Transportation Company (CNW) for reconsideration and modification of the order dated July 18, 1974;

(2) Petition filed August 2, 1974, by the Trustees of Reading Company, Debtor, (Reading), for reconsideration and modification of the order dated July 18, 1974;

(3) Petition filed August 7, 1974, by the Trustees, Lehigh Valley Railroad Company (Lehigh), for reconsideration and modification of the order dated July 18, 1974;

(4) Petition filed August 9, 1974, by the Missouri-Kansas-Texas Railroad Company (MKT) for

reconsideration and modification of the order dated July 18, 1975;

(5) Petition filed August 9, 1974, by the Chicago, Rock Island and Pacific Railroad Company (Rock Island) for reconsideration and modification of the order dated July 18, 1974;

(6) Petition filed August 13, 1974, by the Chicago South Shore and South Bend Railroad (Chicago South Shore) for reconsideration of the Commission's order dated July 18, 1974;

(7) Petition filed August 15, 1974, by the Trustee for The Central Railroad Company of New Jersey (CNJ) for reconsideration and modification of the Commission's order dated July 18, 1974;

(8) Petition filed August 16, 1974, by respondent railroads for leave to file and accompanying supplemental petition for clarification and modification of the Commission's orders dated July 18 and August 9, 1974;

(9) Statement filed August 20, 1974, by the United States Railway Association in support of the railroads' supplemental petition in (8) above; and

(10) Reply filed August 20, 1974, by the Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and Western Maryland Railway Company (Chessie System) to the railroads' supplemental petition in (8) above;

It appearing, That petitioner CNW in (1) above seeks modification of the July 18, 1974, order in the following respects:

1. "Adoption of actual expenditures made by a railroad in the years 1971 through 1973 as the base

period" for determining allowable uses of the authorized increases;

2. Modification of fourth ordering paragraph of the July 18, 1974, order to allow a railroad to use the proceeds of the authorized increases to meet actual increased material and supply costs, other than fuel;

It further appearing, That petitioners, Reading and Lehigh, in (2) and (3) above, seek modification of the July 18, 1974, order to permit railroads in reorganization to transfer funds segregated in Account 716, Capital and Other Reserve Funds, to Account 701, Cash, if necessary, to meet cash requirements for continued operations;

It further appearing, That petitioner, MKT, in (4) above seeks modification of the July 18, 1974, order so as to permit any railroad to retain in Account 701, Cash, rather than segregating in Account 716, Capital and Other Reserve Funds, all revenues derived from the authorized increases in any month in which the current liabilities (excluding debt maturing in one year) of such railroad shall exceed its current assets; and to thereby use all amounts in Account 701, Cash, for any corporate purpose;

It further appearing, That petitioner, Rock Island, in (5) above seeks relief from the requirements in connection with Account 716, Capital and Other Reserve Funds, to allow transfers to Account 701, Cash, when management deems it necessary to pay current operating expenses in order to continue pro-

viding the shipping public with the best service possible; for a 30-day postponement of the due dates for the reports required by the July 18, 1974, order of freight revenues generated by the authorized increases and funds segregated in Account 716, Capital and Other Reserve Funds, in the format shown in Appendix 7 of said order; and postponement of the August 19, 1974, due date for reports in accordance with Appendices 2, 3, 4, and 5 of said order with permission to submit the historical data of 1971, 1972, and 1973, on an annual instead of quarterly basis;

It further appearing, That petitioner Chicago South Shore, in (6) above, seeks (1) exemption from the reporting requirements of the Commission's order because its accounts are maintained in compliance with the Uniform System of Accounts for Electric Railways which differs from the Uniform System of Accounts applicable to Class I Steam Carriers; and (2) permission to expend the funds generated by the authorized increase for normal capital outlays, normal maintenance and other corporate purposes on the ground that it has no deferred maintenance nor delayed capital improvements which qualify under the definitions set forth in the Commission's order of July 18, 1974;

It further appearing, That respondent railroads in their supplemental petition, in (8) above, request clarification and amendment of the Commission's orders to accomplish the following two purposes:

(1) To permit funds obtained from the Ex Parte No. 305 increase to be used for new or increased maintenance and capital improvement programs; and
(2) To permit bankrupt and marginal roads to use funds obtained from the Ex Parte No. 305 increase, if necessary, to meet cash requirements for continued operation.

It further appearing, That respondent railroads suggest that the orders of July 18, 1974 and August 9, 1974, be amended by inclusion of the following language:

> "If a railroad shall have no deferred maintenance nor delayed capital improvements within the meaning of the Commission's orders of July 22, 1974 [entered July 18, 1974] or amounts less than equal to the funds segregated in Account 716, the increased revenue derived from Ex Parte No. 305 may be committed to capital improvements required to handle increased traffic levels or for improvements in the quantity and quality of its railroad service in general."

It further appearing, That the petitioners in (10) above, allege that the supplemental petition filed by the railroads does not represent the position of the Chessie System, stating further that the Chessie System should "be entitled to use such revenues [from the authorized increases] for any valid corporated purposes;"

It further appearing, That the initial order in this proceeding entered June 3, 1974, as here relevant, provided as follows:

> "Our responsibilities under the Act, *inter alia*, section 15a(2), require that we give consideration to "the need, in the public interest, of adequate and efficient railway transportation *service* at the lowest cost consistent with the furnishing of such *service*; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such *service*." (Emphasis supplied) Accordingly, as previously indicated, the Commission intends that revenues generated by increases authorized herein, over and above the amount needed for increased material and supply costs, other than fuel, will be used by the respondents exclusively for reducing deferred maintenance of plant and equipment and delayed capital improvements in order that rail service to the shippers will be improved. The Commission expects that the authorized increases will enable the respondents to expend substantially more for maintenance and capital improvements than in recent years and will evaluate respondents' compliance with this directive. Respondents' failure to apply the increased revenues as heretofore specified will result in the cancellation of these authorized increases. The Commission will determine whether cancellation should be ordered after evaluation of each of the reports required by the conditions set forth in subparagraph 4, of the second ordering paragraph hereof. In any event, on or before June 30, 1975, the Commission will determine

whether the increase so authorized should be allowed to expire or be made permanent."

It further appearing, That, as indicated by the order of June 19, 1974 in this proceeding, respondent railroads did, subject to the terms and conditions set forth in the June 3, 1974 order, publish a tariff designated X-305-A;

And it further appearing, That upon consideration of the petitions previously enumerated, the Commission on its own motion has determined (1) to reopen the proceeding and (2) to hear the parties at oral argument (before rendering a decision on the merits) in order to afford the parties an opportunity to show cause why the outstanding orders setting forth conditions governing the tariff X-305-A, should not be observed in all respects and compliance be had forthwith;

Wherefore, and for good cause:

It is ordered, That this proceeding be, and it is hereby, reopened on the Commission's own motion in accordance with the order of June 3, 1974;

It is further ordered, That an oral argument will be held before the Commission at its offices in Washington, D.C. beginning at 9:30 o'clock a.m. on August 27, 1974, for the purpose of determining the disposition of the pending petitions and whether any further action is warranted in this matter.

And it is further ordered, That the counsel representing the petitioners and Chessie System be present at the oral argument and be prepared to orally

show cause why any change should be made in the conditions and requirements contained in the outstanding orders in this proceeding. Other interested parties may attend and make representations if they so desire.

By the Commission.

ROBERT L. OSWALD
Secretary

[SEAL]

APPENDIX J

SERVICE DATE
Aug. 26, 1974

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 26th day of August, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974
(Reporting Requirements)

Upon consideration of the record in the above-entitled proceeding, including the Reply filed August 20, 1974, by the Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railroad Company and Western Maryland Railway Company to the railroads' supplemental petition of August 16, 1974, for clarification and modification of the Commission's orders of July 22 and August 12, 1974; and of the Objection, filed August 26, 1974, of the Chesapeake and Ohio Railroad Company, the Baltimore and Ohio Railroad Company and Western Maryland Railway Company to the Jurisdiction of the Interstate Commerce Commission to Require the Appearance of Said Railroads at the Oral Argument of August 27, 1974; and

It appearing, That the Commission has continuing jurisdiction over its own orders, and may reopen its proceedings for further consideration at any time

notwithstanding that a judicial review action has been filed, subject only to the proviso that the Commission is without power to act inconsistently with the court's jurisdiction, *American Farm Lines* v. *Black Ball*, 397 U.S. 532, 541-42 (1970); and

It further appearing, That the order of the Commission served August 22, 1974, which *inter alia* requires counsel for the Chessie System Lines to be present at oral argument on August 27, 1974, and be prepared to show cause why any change should be made in the conditions and requirements contained in the outstanding orders in this proceeding, does not interfere with the jurisdiction of the United States District Court for the Eastern District of Virginia in Civil Action No. 74-0370-R, *Chesapeake and Ohio Railway Company, et al.* v. *United States of America, et al.*, either with respect to the Temporary Restraining Order entered by the court on August 18, 1974, or with respect to any other exercise of jurisdiction by the court at this time; and good cause appearing therefor:

It is ordered, That the Objection referred to above be, and it is hereby, overruled.

By the Commission.

ROBERT L. OSWALD
Secretary

[SEAL]

APPENDIX K

SERVICE DATE
Aug. 28, 1974

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 28th day of August, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding and the views expressed at oral argument before the Commission on Tuesday, August 27, 1974;

It appearing, That the National Industrial Traffic League by petition and at oral argument represented that parties had not been served with copies of petitions and other pleadings filed by various railroad respondents including the Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and Western Maryland Railway Company (Chessie System);

It further appearing, That by letter dated August 26, 1974, and received August 27, 1974, the respondent railroads, except the Chessie System, advised the Commission that a copy of each of the railroad petitions will be sent to all parties of record no later than August 27, 1974;

And it further appearing, That respondent railroads, except the Chessie System, have requested an extension of time from September 3, 1974 to September 10, 1974 for filing data and information required by the orders in this proceeding;

It is ordered, That the Chessie System be, and it is hereby, directed to serve copies of its petition and reply upon all parties to this proceeding forthwith and not later than August 30, 1974.

It is further ordered, That should any respondents, including the Chessie System, file additional pleadings in this matter, they be, and they are hereby, directed to serve copies upon all parties to this proceeding.

It is further ordered, That parties to this proceeding be, and they are hereby, authorized to file replies to the railroad pleadings, including the reply of the Chessie System, within 20 days from date of service of this order. For the Commission's use, the original and 24 copies of all documents filed in accordance with this order should be sent to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, Room 5342, but a lesser number of copies may be filed upon a showing of good cause. One copy of each document shall be served (except that where parties are able to do so, 25 copies should be served) upon the representative of the petitioning railroads, Mr. Thormund A. Miller, American Railroads Building, Room 527, 1920 L Street, N.W., Washington, D.C. 20036.

And it is further ordered, That the respondent railroads' request for extension of time, as above indicated, be, and it is hereby, granted, provided that the data and information called for pursuant to our prior orders shall be filed as soon as possible but in no event later than September 10, 1974.

By the Commission.

JOSEPH M. HARRINGTON
Acting Secretary

[SEAL]

APPENDIX L

SERVICE DATE
Oct. 7, 1974

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 3rd day of October, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, the views expressed at oral argument before the Commission on August 27, 1974, the petitions and other pleadings detailed in our order dated August 21, 1974, and the following additional pleadings:

(1) Petition filed August 21, 1974, by the Soo Line Railroad Company for modification of the Commission's order dated July 18, 1974;

(2) Petition filed August 21, 1974, by the Grand Trunk Western Railroad Company for reconsideration and modification of the Commission's prior orders herein insofar as this petitioner is concerned;

(3) Petition filed July 3, 1974, by the Wine Institute for reconsideration of the order of the Commission dated June 3, 1974, with regard to the increase applicable to wine and winery products;

(4) Petition filed July 5, 1974, by the Pacific Northwest Grain and Grain Products Association for an order making more definite and certain the phrase "recognized customs of the trade" in the Commission's order dated June 3, 1974;

(5) Replies filed by respondent railroads July 22, 1974, to petitions in (3) and (4) above; and revised reply filed August 9, 1974;

(6) Letter of Penn Central Transportation Company dated August 14, 1974, requesting construction that Penn Central may apply proceeds of the rate increase to current maintenance programs;

(7) Replies filed pursuant to our order dated August 28, 1974, by American Bakers Association; Pacific Northwest Traffic League; National Industrial Traffic League; General Mills, Inc.; Illinois Grain Corp., FS Services, Inc.; The Fertilizer Institute; Bethlehem Steel Corporation; The Construction Aggregate Rail Shippers Conference, Inc. (CARS); The CECO Corporation; AMAX, Inc.; Hormel & Co., Oscar Mayer & Co., John Morrell & Co., Rath Packing Co.; American Textile Manufacturers Institute, Inc., North Carolina Textile Manufacturers Assoc., Inc., South Carolina Textile Manufacturers Assoc., Inc., Georgia-Alabama Textile Traffic Assoc., Inc.; Wedron Silica Division of Del Monte Properties, Co.; Property Owners' Committee (coal interests); and Firestone Tire & Rubber Company; and a reply filed August 28, 1974, by John G. Troiana, Trustee of the property of the Lehigh and Hudson Railway Company, Debtor, in opposition to Penn Central's prior request for relief; and

It appearing, That as indicated in our order dated August 21, 1974, various railroads in reorganization seek modification of the July 18, 1974, order to permit the transfer of funds segregated in Account 716, Capital and Other Reserve Funds, to Account 701, Cash, if necessary to meet cash requirements for continued operation of such railroads;

It further appearing, That similar requests for relief for railroads in reorganization were presented at oral argument and in (6), above;

It further appearing, That respondent railroads, in their supplemental petition described in our order dated August 21, 1974, and at oral argument, request clarification and amendment of the Commission's orders to accomplish the following two purposes:

(1) To permit funds obtained from the Ex Parte No. 305 increase to be used for new or increased maintenance and capital improvement programs; and
(2) To permit bankrupt and marginal roads to use funds obtained from the Ex Parte No. 305 increase, if necessary, to meet cash requirements for continued operation.

It further appearing, That by reply to the railroads' supplemental petition filed August 20, 1974, the Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and Western Maryland Railway Company (Chessie System) indicated that the amendments proposed above do not

represent the position of the Chessie System which contends it should "be entitled to use such revenue [from the authorized increases] for any valid corporate purposes;"

It further appearing, That the petitioners in (1) and (2) above, in said petitions and at oral argument, request modification of outstanding orders to permit the revenues derived herein to be used for any capital improvements or maintenance projects which improve the quantity or quality of railroad service, whether or not delayed or deferred;

It further appearing, That other petitioners, including the Chicago and Northwestern Transportation Company and the Chicago South Shore and South Bend Railway Company seek reconsideration or modification of our orders in the respects set forth in our order dated August 21, 1974;

It further appearing, That the Florida East Coast Railway Company contends unrestricted use of the revenues from the increase should be permitted for a carrier whose expenditures for maintenance and capital improvements exceed the average of the railroad industry;

It further appearing, That the accounting and reporting requirements as defined and specified in the order of July 18, 1974, are necessary for the Commission to be informed about the extent of deferred maintenance and delayed capital improvements which must be overcome to provide adequate and improved service to shippers, as specifically identified as of June 30, 1974, by railroad management;

It further appearing, That, as previously indicated, the Commission intends that revenues generated by the increases authorized herein, over and above the amount specified for increased material and supply costs, other than fuel, be used by respondents *exclusively* for reducing deferred maintenance of plant and equipment and delayed capital improvements in order that rail service to the shippers be improved; however, should the situation of a particular carrier require special treatment, application should be made to the Commission and the matter will be considered on an individual basis;

It further appearing, That although some of the shippers and shipper associations replying herein are opposed to any modification of our orders, a number of replicants, including the National Industrial Traffic League, recognize that the *particular* circumstances of a *particular* carrier might warrant relief, provided such relief is accorded on the basis of an individual petition or application served upon all parties setting forth the justification therefor, and that the parties are afforded an opportunity to reply;

It further appearing, That in the event the funds to be segregated in Account 716, Capital and Other Reserve Funds, pursuant to the orders entered in this proceeding, exceed the dollar amount of deferred maintenance or delayed capital improvements "as specifically identified as of June 30, 1974, by railroad management" then it would be consistent with the intention of the Commission if such excess funds in Account 716 were to be expended for new and addi-

tional capital improvements over and above those presently undertaken, scheduled or otherwise committed, provided that specific evidence as to such proposed expenditures shall be submitted in advance for approval to the Commission, Division 2;

And it further appearing, That it would serve no useful purpose to deny the use of funds segregated in Account 716, Capital and Other Reserve Funds, should a transfer to Account 701, Cash, become imperative for continued operation and sufficient funds are not available from other sources;

It is ordered, That railroads in reorganization may transfer funds segregated in Account 716, Capital and Other Reserve Funds, in accordance with accounting instructions in the July 18, 1974 order, to Account 701, Cash, provided other funds are not available and the transfer is necessary to meet cash requirements for continued operation, and that a report shall be filed with the Commission, Division 2, immediately upon the transfer showing the date of transfer, amount of funds transferred, and full explanation of the circumstances giving rise to the necessity for such transfer;

It is further ordered, That any railroad not in reorganization which finds it imperative to expend the funds generated by the authorized increase for operating purposes to avoid curtailment of transportation service or to avoid the filing of a petition in reorganization may make application to the Commission, Division 2, for approval of the proposed transfer and use of such funds, said application to be

accompanied by supporting financial and statistical information and a certification that the funds are necessary for the purposes aforesaid;

It is further ordered, That railroad respondents, if any, which are unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined in this proceeding, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission, Division 2, as above set forth;

It is further ordered, That any petitions for relief or other pleadings filed in this matter shall be served upon all parties, and the parties shall be afforded an opportunity to file representations in response thereto within 10 days from the date of service, prior to which time action will not be taken on any proposed transfer except in the case of an extreme emergency;

It is further ordered, That the petitioning electric railway, Chicago South Shore, may report the information required in the Commission's order of July 18, 1974, using the account numbers provided for such items in the uniform system of accounts for electric railways in lieu of the account numbers for railroad companies shown in the Appendices to the order.

It is further ordered, That in all other respects, the petitions detailed in our order dated August 21, 1974, and the petitions and contentions above described be, and they are hereby, denied for the reason that sufficient grounds have not been presented

to warrant the action sought, without prejudice, however, to further requests for relief pursuant to the procedures hereinabove set forth.

And it is further ordered, That noice of this order shall be given to the general public by depositing a copy in the Office of the Commission's Secretary and by filing a copy with the Director, Office of the Federal Register, for publication in the Federal Register.

By the Commission.

ROBERT L. OSWALD
Secretary

[SEAL]

APPENDIX M

SERVICE DATE
Jun. 12, 1975

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 6th day of June 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the railroads' petition filed May 8, 1975, requesting the Commission to make permanent the general increase authorized in this proceeding and further requesting the Commission to eliminate the conditions previously imposed in connection with use of the funds from the increase; the separate petition filed May 8, 1975, by the Chessie System Lines also seeking permanent establishment of the Ex Parte No. 305 increase; and the replies filed by Archer Daniels Midland Company, The National Industrial Traffic League, Consumers Power Company, and the National Council of Farmer Cooperatives, on May 20, May 27, and May 28, 1975, respectively;[1]

It appearing, That petitioners contend that the revenues generated by Ex Parte No. 305 are crucial

[1] A number of additional replies, filed May 28, 1975, have also been considered.

to their continued operation, and that elimination of existing limitations upon the use of the funds would provide more flexibility which is needed in view of existing economic conditions;

It further appearing, That while several replicants urge cancellation of the increase, all strenuously oppose any extension of the increase unless the conditions imposed by the Commission, designed to improve rail service, are continued in effect, and that replicants assert such action would constitute an unjustified windfall to the carriers in view of the fact that only 3 percent of the 10 percent increase was justified on the basis of costs;

It further appearing, That following oral argument before the Commission an order was entered relieving railroads in reorganization from using the funds in the manner specified in the orders of June 3, 1974 and July 18, 1974, and setting forth procedures to be followed by railroads not in reorganization seeking similar relief;

It further appearing, That the Commission has received and acted upon numerous requests for relief filed in accordance with our order dated October 3, 1974;

It further appearing, That upon consideration of request for relief, for the reasons set forth in the individual orders, the Commission granted the following carriers relief on the date indicated:

Grand Trunk Western Railroad Company	December 17, 1974
Bessemer and Lake Erie Railroad Company	January 22, 1975
The Lake Terminal Railroad Company	

Union Railroad Company	
Birmingham Southern Railroad Company	
Carbon County Railway Company	
Duluth, Missabe and Iron Range Railway Company	
Elgin, Joliet and Eastern Railway Company	February 5, 1975
McKeesport Connecting Railroad Company	
Youngstown and Northern Railroad Company	
Chicago, Rock Island and Pacific Railroad	February 28, 1975
Chattahoochee Industrial Railroad	March 5, 1975
Newburgh and South Shore Railway Company	March 19, 1975
Chicago South Shore and South Bend Railroad	March 19, 1975
Sandersville Railroad Company	April 25, 1975
Chicago, Milwaukee, St. Paul and Pacific Railroad Company	April 25, 1975
Richmond, Fredericksburg and Potomac Railroad Company	April 29, 1975

It further appearing, That upon consideration of other requests for relief, for the reasons set forth in the individual orders the Commission denied the following carriers relief on the date indicated:

Durham and Southern Railway Company	March 5, 1975
Soo Line Railroad Company	March 5, 1975
Detroit, Toledo, Ironton Railway Company	March 18, 1975
Utah Railway Company	April 17, 1975
The Arcata and Mad River Rail Road Company	April 29, 1975
Durham and Southern Railway Company (For further consideration)	May 27, 1975

It further appearing, That the procedures established pursuant to our order of October 3, 1974, have provided an adequate basis for determining whether relief from the prescribed conditions is warranted,

while affording all parties an opportunity to make their views known;

It further appearing, That the railroads have shown a need for continuation of the Ex Parte No. 305 increase, but have not shown sufficient cause for elimination of the conditions imposed in regard to the use of funds (over the amount specified for increased material and supply cost and increased income taxes) for deferred maintenance and delayed capital improvements, the purposes for which the increases were granted on the basis of the carriers' representations;

And it further appearing, That, unless otherwise extended, the Ex Parte No. 305 increase is scheduled to expire June 30, 1975;

It is ordered, That the June 30, 1975 expiration date for the Ex Parte No. 305 increase be, and it is hereby, extended so as to expire with April 30, 1976 unless otherwise ordered by the Commission.

It is further ordered, That in all other respects the petitions be, and they are hereby, denied.

AMENDMENT TO SPECIAL PERMISSION NO. 74-3440 AUTHORIZING CERTAIN DEPARTURES FROM THE COMMISSION'S PUBLISHED TARIFF REGULATIONS

It is ordered, That Special Permission No. 74-3440, as amended, be, and it is hereby, further amended, so as to provide that all rule relief authorized shall expire on April 30, 1976.

It is further ordered, That petitioners be, and they are hereby, authorized to publish and file a supplement to the master tariff of increased rates and charges for the purpose of extending the expiration date from June 30, 1975, to April 30, 1976, upon not less than fifteen days' notice to the Commission and the public, such supplement to be considered exempt from the terms of rule 9(e) of Tariff Circular No. 20.

And it is further ordered, That in all other respects, the terms of the original permission, as heretofore amended, shall remain the same.

By the Commission.

RICHARD W. KYLE
Acting Secretary

[SEAL]

VICE CHAIRMAN O'NEAL, dissenting in part:

I would allow 7 percent of the rate increase authorized by the Commission in Ex Parte No. 305 to lapse as of June 30, 1975. Reports filed by the railroads for the last six months of 1974 indicate that total deferrals (deferred maintenance and delayed capital investment) increased by $27.3 million. New deferrals are increasing faster than old deferrals are overcome. The carriers appear to be reducing their customary level of expenditures for maintenance and capital investment to offset the Ex Parte No. 305 revenues segregated in Special Account No. 716. The net result is that the conditions which the Commission imposed in this proceeding are without effect. The purpose of the Commission's action in granting the 7 percent of the sought increase in Ex Parte No. 305 which was not cost justified has been frustrated. The Commission should authorize further applica on of only 3 percent of the increase.

COMMISSIONER GRESHAM, dissenting in part:

I have consistently opposed the Commission's dilution of the original conditions specified in our orders of June 3, 1974, and July 18, 1974. If those initial conditions were reimposed, I would extend the expiration date of the 10-percent increase for the 10-month period approved by a majority of the Commission.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 592209 28

Supreme Court, U. S.
FILED
JAN 8 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-420

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Appellants

—v.—

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DOCKETED SEPTEMBER 16, 1975
PROBABLE JURISDICTION NOTED NOVEMBER 3, 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-420

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Appellants

—v.—

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

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[1] The opinion of the district court is reprinted as Appendix A to the Jurisdictional Statement. The judgment of the district court is reprinted as Appendix B to the Jurisdictional Statement, and the notice of appeal is reprinted as Appendix C. The relevant orders of the Interstate Commerce Commission are reprinted as Appendices D through M to the Jurisdictional Statement.

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DOCKET ENTRIES

CA 74-0370-R

DATE	PROCEEDINGS
1974	
Aug. 15	Complaint, no jury, with request for three-judge panel, filed.
Aug. 15	Motion for Temporary Restraining Order filed by pltfs.
Aug. 16	Summonses issued to defts.
Aug. 16	Affidavits of James T. Lyon; C. J. Henry, Jr.; & J. T. Ford filed by pltfs.
Aug. 16	Pltfs' List of Authorities, filed.
Aug. 16	IN OPEN COURT: Merhige, J. No OCR Appearances: Parties by counsel. Matter came on for hearing on pltf's motion for a TRO. Arguments of counsel heard. Motion taken under advisement by the Court. (36 Mins.)
Aug. 18	TEMPORARY RESTRAINING ORDER to remain in force only until three-judge hearing or a preliminary injunction granted; no bond required of pltfs' railroads ent 8-18-74, 7:57 AM, RRM,JR., filed. Copies to counsel.
Aug. 19	Notification and Request for Designation of Three-Judge Court filed.
Aug. 21	Marshal's Returns on Summons as to each deft. exec. 8-19-74, filed.
Aug. 23	Designation of Three-Judge Court designating Judge Butzner; Judge Merhige and Judge Warriner ent 8-21-74, Chief Judge, Fourth Judicial Circuit, Hon. Clement F. Haynsworth, Jr., and filed. Copies mailed counsel and files delivered to Judges.

DATE	PROCEEDINGS

1974

Aug. 26 PRE-TRIAL ORDER; pltfs' opening brief due within 60 days; reply 30 days after pltfs' filing; pltfs' reply 15 days thereafter; matter set for hearing December 20, 1974, 10 am; ent 8-26-74, RRM, JR., filed. Copies mailed.

Oct. 9 Amended Complaint filed and summonses issued.

Oct. 11 Marshals return on summons as to all defendants listed executed and filed

Oct. 25 Brief of the Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and Western Maryland Railway Company filed. Copies to Judges.

Oct. 29 Joint Answer of U. S. & ICC filed. Copies distributed to Judges.

Nov. 27 Notice of motion filed by defts.

Motion to dissolve temporary restraining order filed by defts.

Memorandum in support of motion to dissolve temporary restraining order, filed.

Affidavit of Edward P. Johnson, filed. (Exhibit A & B)

Joint brief of the U.S. and the Interstate Commerce Commission, filed.

Dec. 10 Reply Brief of the C&O, B&O and Western Maryland Railway Company, filed.

Memorandum in opposition to motion to dissolve restraining order, with Exhibit A, B & C., filed. Copies to Judges Butzner, Merhige and Warriner.

Dec. 16 Suppl. Affidavit of J. T. Ford filed on behalf of pltfs.

Dec. 13 Affidavit of James T. Lyon filed on behalf of pltfs.

DATE	PROCEEDINGS

1974

Dec. 16 Affidavit of J. W. Brent filed on behalf of pltfs.

Dec. 19 Affidavit of C. C. Hawk, filed

Dec. 20 IN OPEN COURT: Butzner, Merhige, Warriner, Judges McCoy, OCR Matter came on for hearing of oral arguments on merits of case. Arguments of counsel heard. Case taken under advisement by the Court. Deft's motion to dissolve TRO heard; motion taken under advisement by the Court. (1 Hour 38 Mins.)

1975

Apr. 22 Opinion of the Court filed. [23 pgs]

Apr. 22 ORDER enjoing The Commission frm enforcing order of 6-3-74 & 10-3-741 petition for injunction to restrain Commission frm requiring reports prescribed by those orders is Denied; action remanded to Commission; ent. Judges of the Panel, 4/22/75, filed. Copies to counsel. [2 pgs]

June 20 Deft's Notice of Appeal to USSC filed.

June 30 Order directing Clerk to transmit entire, requesting Supreme Court return records on finality of action, ent'd, filed.

June 30 Entire Case record mailed to Clerk, U.S. Supreme Court. (1 Volume)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

CA 74-0370-R

[Filed Aug. 15, 1974, Clerk, U.S. Dist. Court, Richmond, Va.]

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY
and
WESTERN MARYLAND RAILWAY, PLAINTIFFS,

v.

UNITED STATES OF AMERICA
and
INTERSTATE COMMERCE COMMISSION, DEFENDANTS.

COMPLAINT

(1) Plaintiff, The Chesapeake and Ohio Railway Company (C&O), is a Virginia corporation and is a carrier by railroad subject to the provisions of the Interstate Commerce Act. Plaintiff, The Baltimore and Ohio Railroad Company (B&O), is a Maryland corporation and is a carrier by railroad subject to the provisions of the Interstate Commerce Act. Plaintiff, Western Maryland Railway (Western Maryland), is a Maryland corporation and is a carrier by railroad subject to the provisions of the Interstate Commerce Act. Collectively, these three carriers are referred to herein as the "Chessie System lines."

(2) This is an action to enjoin the enforcement of, annul and set aside those parts of the orders, served June 4, July 22 and August 12, 1974, of the Interstate Commerce Commission in a proceeding known as Ex Parte No. 305, Nationwide Increase of Ten Percent in

Freight Rates and Charges, 1974, which purport to impose conditions limiting the use of the revenues derived from such increased rates and charges and requiring certain reports with respect thereto, insofar as said conditions apply to the Chessie System lines. This action is brought pursuant to Section 2321 of Title 28 of the United States Code. Defendant, the Interstate Commerce Commission (the "Commission"), is an administrative agency of the United States Government located in Washington, D. C. The United States of America is named as a party defendant pursuant to 28 U.S.C. 2322.

(3) The jurisdiction of the Court is conferred under the provisions of 28 U.S.C. Sections 1336(a), 2284 and 2321-2325, inclusive. Venue is laid in this Court pursuant to 28 U.S.C. Section 1398(a), inasmuch as the Plaintiff, C&O, is a corporation organized and existing under laws of the Commonwealth of Virginia. A three-judge district court is requested pursuant to 28 U.S.C. 2325 and 2284.

(4) In its order served June 4, 1974, a true copy of which is attached hereto as Exhibit A, the Commission expressed its recognition that the nation's railroads are in need of additional freight revenues to offset recently incurred costs of materials and to provide an improved level of earnings; and further expressed its recognition that without the additional revenues to be derived from increased freight rates and charges, the earnings of the nation's railroads would be insufficient to enable them under honest, economical and efficient management to provide adequate and efficient railroad transportation services consistent with the public interest and the national transportation policy. The Commission then authorized such railroads to file schedules containing increased rates and charges, but subject to the conditions among others that:

> 3. Revenues generated by the increase should be expended for capital improvements and deferred maintenance of plant and equipment and the amount needed for increased material and supply cost, other than fuel. A record of such expenditures shall be maintained on a monthly basis.

4. At the end of the 3rd, 6th, and 9th months following the effective date of the increases, each carrier shall provide this Commission with an estimate of the freight revenues generated by the increases. Additionally, each carrier shall report the amount of expenditures made for deferred maintenance of plant and equipment, e.g., by type of car, track, cross ties, etc., as well as amounts expended for capital improvements by type of project. Furthermore, each carrier shall report the amount of unexpended funds derived from the authorized increases and how those funds are to be expended.

The June 4, 1974 order imposed no condition requiring the segregation of such increased revenues, nor did it provide any definition of the terms "deferred maintenance" or "capital improvements" as used in condition No. 3 above.

(5) Thereafter, on June 5, 1974, the nation's railroads proceeded in good faith to publish the increased schedules, effective June 20, 1974.

(6) Subsequently, by its order served July 22, 1974, a true copy of which is attached hereto as Exhibit B, the Commission imposed further conditions to its prior authorization of June 4 which, for the first time, purport to require segregation of the increased revenues; purport strictly to limit the use of at least 7 percentage points of the 10% authorization to "deferred maintenance" and to "*delayed* capital improvements" *as defined in the July 22 order* (up to 3 percentage points may be applied to increased expense of materials and supplies, except fuel); and purport to impose certain detailed accounting and reporting requirements, far broader in scope than those suggested by condition 4 of the June 4 order, which are designed to implement the foregoing conditions with respect to the segregation and use of such revenues. All of the purported conditions in the July 22 order, as modified by the order of August 12 described below, which relate to such segregation and restricted use of the increased revenues are hereinafter referred to as the "limiting

conditions," and all conditions which purport to impose accounting and reporting requirements with respect thereto are hereinafter referred to as the "accounting and reporting conditions."

(7) The order of July 22 defines deferred maintenance to be "accrued deterioration" in a railroad's plant or equipment which has rendered its services to shippers "partially or wholly inadequate and/or has resulted in diminishing the railroads' competitive ability." The Chessie System lines' expenditures for maintenance of plant and equipment do not in any sense qualify under the Commission's definition. Chessie System lines have no deferred maintenance within the meaning of the term as used by the Commission. Chessie System lines' plant and equipment are kept in regular repair and their maintenance program is adequate to meet the needs of their shippers considering the volume and frequency of their shipments. Chessie System lines' expenditures for capital improvements likewise also do not qualify under the Commission's definition which specifies "delayed" capital improvements which were "actually planned" but not undertaken because "funding or financing was not available or projected to be available through June 30, 1975."

(8) Chessie System lines petitioned the Commission for reconsideration and amendment of the order of July 22. Their petition was denied by the Commission's order served August 12, 1974, a true copy of which is attached hereto as Exhibit C; and the Chessie System lines have exhausted their administrative remedies with respect to the limiting conditions and to the accounting and reporting conditions referred to above. All those provisions of the Commission's attached orders in Exhibits A, B and C which purport to impose such limiting conditions and parts of such orders which the Chessie System lines in this action seek to annul, as applied to such lines, and to enjoin the enforcement of, as applied to such lines. All such limiting conditions and accounting and reporting conditions, as applied to Chessie System lines, should be nullified and declared void by this Honorable Court, and the enforcement thereof against such lines be temporarily restrained and thereafter temporarily and permanently

enjoined, for the reasons and upon the grounds which follow.

(9) The net result of the limiting conditions is that under the Commission's definitions of deferred maintenance and delayed capital improvements, the Chessie System lines will be unable to apply any of the increased revenues derived from the Ex Parte No. 305 proceeding (other than those earmarked for increased material and supply costs) to any projects now scheduled or which may be scheduled in the foreseeable future. No worthwhile project on Chessie System lines designed to improve its transportation service to the shipping public has ever been deferred because financing or funding was not available. None will be as long as the Chessie System lines' earnings are at levels adequate enough to attract capital. Chessie System lines have never stinted in their expenditures to provide adequate and efficient transportation service to their customers.

(10) On May 13, 1974, the respective Boards of Directors of The Baltimore and Ohio Railroad Company and The Chesapeake and Ohio Railway Company authorized massive capital expenditure programs totaling $78,874,143 for the B&O and $45,014,426 for C&O, a grand total of $123,888,569. The programs include, among other things, the acquisition by B&O of 3,000 100-ton hopper cars and 62 3,000-horsepower 4-axle general purpose diesel locomotives. C&O is to acquire an additional 2,000 100-ton hopper cars and 10 3,000-horsepower diesel locomotives. Chessie System lines have an adequate car supply and other facilities for hitherto normal levels of traffic—i.e., levels in existence prior to the onset of the energy crisis. The acquisition of the additional equipment mentioned above is necessary to meet very substantial increases in coal production at C&O/B&O origin mines which have just opened or which will open in the future. Starting in June, 1974, a total of 55 new mines began to come on line at C&O/B&O origin points. This is new traffic for which, until now, there have been no equipment needs. The total production of these new mines will exceed 28 million tons annually. Twenty of the total group of 55 new mines have already begun production.

(11) The commitment to acquire the new equipment was made, of course, in anticipation that Chessie System lines' earnings would be at levels sufficient to support the programs. The Boards acted with full assurance from management that the necessary financing would be forthcoming. They would not have approved the program without such assurances, for Boards do not act on programs of this magnitude on the basis of contingencies. It should be noted further that the commitments by the Boards were made after the filing of the railroads' petition of April 22, 1974 which initiated Ex Parte No. 305. However, under the Commission's definition, these significant expenditures do not qualify because the program had not been deferred because funding or financing was not available.

(12) On June 17, 1974, the respective Boards of Directors of the B&O and C&O authorized additional capital expenditures totaling $25,427,995 for B&O and $19,547,995 for C&O covering the acquisition of additional new equipment. These, too, would not qualify under the Commission's definition because the projects cannot be said to have been deferred for the reason that funding or financing was not available. These are new projects designed to handle new traffic.

(13) As previously stated, Chessie System lines have never lacked financing for those capital expenditures which they deemed necessary to provide adequate and efficient transportation service for their customers. Their customers have not suffered because the System had to defer needed capital improvements and this fortunate circumstance will continue as long as Chessie System lines' earnings are adequate enough to attract capital.

(14) The May and June Board actions described above tell only part of the story. Chessie System lines' total planned capital expenditures are $300 million. This sum will be used to purchase 72 diesel locomotives, 10,000 coal cars and 2,714 merchandise cars. Considering the rapidly rising prices of steel and other materials, the final sum expended will be well in excess of $300 million. Further, since coal tonnage on the Chessie System lines is

growing at a pace faster than that of other major coal hauling railroads, significant additional equipment authorizations can be expected. Chessie System knows of no project now in planning on its system included in the $300 million program which it would have to defer because financing or funding is not available. With Chessie System's credit rating and assuming earnings are adequate, funds will be forthcoming for capital improvements albeit at extremely high interest rates.

(15) Chessie System lines committed in May and June, 1974, a total of $168,864,559 in expenditures for capital improvements—a sum far in excess of the revenues it expected to receive from Ex Parte No. 305. Unless they are permitted to apply these additional revenues to their May and June commitments and to the other commitments they have made in the total $300 million program, they will be unable to make use of these revenues. Such revenues will simply lie dormant in a sterile, segregated account which will result in several serious consequences both to Chessie System lines and the shipping public.

(16) First, it places Chessie System at a distinct competitive disadvantage vis-a-vis other railroads, which for one reason or another have deferred maintenance or delayed capital improvements within the meaning of the Commission's order. These lines will be able to use the additional revenues to buy cars and other equipment while Chessie System's money will lie fallow. In effect, the order penalizes Chessie System and other efficient carriers and rewards only those railroads which are inefficient, in direct contravention of the national transportation policy (49 U.S.C., preceding s.1) which Congress has provided for the Commission's explicit direction in administering the Interstate Commerce Act, and in direct contravention of Section 15a(2) of the Act itself (49 U.S.C. 15a(2)). For this reason alone the Chessie System lines will suffer irreparable damage unless the temporary restraining order and other injunctive relief prayed for herein are granted by this Honorable Court. Absent such relief, the Chessie System lines will suffer further irreparable damage by reason of the fact that they will be required to

pay Federal income taxes, at a rate of 48%, on the sterile "income" in the segregated account prescribed by the limiting conditions and by the accounting and reporting conditions.

(17) The limiting conditions also penalized Chessie System lines' customers. They must pay increased freight rates which Chessie System lines may not use, in turn, to make improvements in plant and equipment for their benefit. They are, in effect, paying something for nothing. This is inflation at its worst, and is squarely at cross purposes with the national transportation policy and the laudable objectives of the Interstate Commerce Act, and in fact, inconsistent with the clear intention expressed by the Commission itself in its original order of June 4, 1974.

(18) Moreover, the order of June 4, 1974 authorizing the 10% increase is silent as to the fate of unusable funds. As a result, the order as it now stands requires that the segregated funds remain forever frozen and unusable. This result is in no one's interest, neither that of Chessie System lines, nor more importantly, that of the shippers who are paying the higher charges.

(19) Insofar as the Chessie System lines are concerned, the Commission clearly exceeded its statutory authority by conditioning the use to which the revenues derived from Ex Parte No. 305 might be applied. There is no evidence of record in the proceeding before the Commission that could support a finding that, as applied to the Chessie System lines, the increases in rates and charges would be unjust and unreasonable without the imposition of the limiting conditions. Thus such purported limiting conditions, as applied to the Chessie System lines, are void and of no force and effect.

(20) In view of the foregoing, the limiting conditions are unlawful as applied to the Chessie System lines and should be set aside for the reasons and upon the grounds that—

(a) there is no warrant in law and fact for such conditions;

(b) there is no rational basis for, or statutory

authority for, the Commission's action in imposing such conditions;

(c) the imposition of such conditions constitutes a denial of due process of law;

(d) the imposition of such conditions violates the public policy of the United States as prescribed by Congress in the national transportation policy, and is in violation of the Interstate Commerce Act;

(e) the imposition of such conditions is arbitrary, capricious, discriminatory and an abuse of the Commission's discretion; and

(f) the imposition of such conditions is unsupported by any evidence of record, substantial or otherwise.

(21) The accounting and reporting conditions, which have no purpose except to implement the unlawful limiting conditions, also are subject to each of the legal infirmities enumerated in paragraph 20, and are therefore unlawful as applied to the Chessie System lines.

(22) If the relief prayed for in this action is granted, the Chessie System lines will then be able to apply the increased revenues to their capital improvement program described and cash from such revenues could then be included in working capital, thus increasing the bond ratings of the Chessie System lines and enabling them to borrow money for improvements at lower rates of interest.

WHEREFORE, Plaintiffs respectfully pray:

(1) That a court of three judges be constituted and convened pursuant to 28 U.S.C. 2284 and 2321-2325, inclusive.

(2) That in accordance with 28 U.S.C. 2284(3) the operation and effect of the limiting conditions and the accounting and reporting conditions, as applied to Plaintiffs, be temporarily restrained until a hearing and determination by the full three-judge court.

(3) That the court of three judges issue an interlocutory injunction staying and suspending the operation and effect of said limiting conditions and accounting and reporting conditions, as applied to Plaintiffs, pending final hearing and determination of this suit.

(4) That the court of three judges, upon final hearing of this suit, enter a decree permanently enjoining, setting aside and annulling the said limiting conditions and accounting and reporting conditions, as applied to Plaintiffs.

(5) That the court grant such other and further relief as it may deem fit and proper and as equity may require.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY
THE BALTIMORE AND OHIO
RAILROAD COMPANY
WESTERN MARYLAND RAILWAY

By _____
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Of Counsel

COMMONWEALTH OF VIRGINIA)
) To-wit:
CITY OF RICHMOND)

I, J. T. Ford, being duly sworn say that I am Senior Vice President of The Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and Western Maryland Railway, and that the allegations of the foregoing Complaint are true to the best of my knowledge, information and belief.

/s/ J. T. Ford
J. T. FORD

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid this 15th day of August, 1974.

My commission expires: 4/22/78.

/s/ Deborah P. Ussery
Notary Public

* * * * *

[Appendices omitted.]

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,

and

WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

MOTION FOR TEMPORARY
RESTRAINING ORDER

Plaintiffs, the Chesapeake and Ohio Railroad Company, The Baltimore and Ohio Railroad Company and the Western Maryland Railway, by counsel, move the Court pursuant to Section 2284(3), United States Code and Rule 65(b), Fed. R. Civ. P., for the entry of a temporary Restraining Order restraining the enforcement, operation or execution of certain limiting conditions on the use of plaintiffs' revenues and of certain reporting conditions included in Orders issued by the Interstate Commerce Commission served June 4, July 22 and August 12, 1974 in a proceeding known as *Ex Parte No. 305*, Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974, pending hearing and determination of plaintiffs' Complaint on the ground that immediate and irreparable injury, loss and damage will result to plaintiffs as more fully appears from a copy of the verified Complaint attached hereto, which Complaint is being filed simultaneously with this Motion.

This Motion is also supported by the attached Memorandum in Support of Plaintiffs' Motion for a Temporary Restraining Order and by the Certificate of the under-

signed showing that a reasonable effort has been made to give notice of this Motion to the United States Department of Justice, to the General Counsel of the Interstate Commerce Commission and to the United States Attorney for the Eastern District of Virginia, Richmond Division.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY
THE BALTIMORE AND OHIO
RAILROAD COMPANY
WESTERN MARYLAND RAILWAY

By _____
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Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

Civil Action No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,
and
WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,
and
INTERSTATE COMMERCE COMMISSION, DEFENDANTS

AFFIDAVIT OF J. T. FORD

COMMONWEALTH OF VIRGINIA)
) To-wit:
CITY OF RICHMOND)

J. T. Ford, being first duly sworn, hereby deposes and says that:

(1) I am Senior Vice President for each of the plaintiff railroad companies. I have held positions of responsibility since 1963 in the financial departments of one or more of the plaintiff railroads, hereinafter referred to collectively as the "Chessie System lines." More recently, in July, 1974, I was made Senior Vice President of each of the plaintiff companies, retaining, however, overall responsibility for the administration of the financial departments.

(2) I am familiar with all of the steps taken by plaintiff railroads, and the railroad industry in general, in connection with the proceeding known as *Ex Parte No. 305, Nationwide Increase of Ten Percent in Freight Rates and*

Charges, 1974, and the controversy which has evolved as the Interstate Commerce Commission attempts in that proceeding to attach conditions to its authorization for increased revenue, which conditions would, as applied to plaintiffs, prohibit the use of such increased revenues and which would also impose unreasonably burdensome accounting and reporting requirements.

(3) The purposes of this Affidavit are twofold. First, to demonstrate that, unless this Honorable Court grants the pending motion of the plaintiff railroad companies for an order which would temporarily restrain the operation and effect of the limiting conditions and accounting and reporting conditions described in the Complaint, plaintiff railroad companies and the shipping public which utilizes their services will suffer irreparable damage. Second, to demonstrate that there is a likelihood that plaintiff railroads will prevail on the merits in this suit.

(4) The net effect of the Commission-imposed conditions which are attacked in the plaintiffs' Complaint, which Complaint I have verified on the basis of my own personal knowledge, is to freeze and isolate the increased freight revenues derived from Ex Parte No. 305, in a special segregated account with the result that the plaintiff railroads are unable to use such revenues for the very purpose intended by the Commission in its order of June 4, 1974, namely, that such newly generated revenues should be committed for improvements in the railroads' plant, equipment and service. As a consequence, the tens of thousands of shippers who utilize the services of the Chessie System lines, and who are in fact paying to those lines these increased charges are deprived of any of the benefits which would flow from the use of these revenues.

(5) While the Chessie System lines have no "deferred maintenance" nor "delayed capital improvements" for which the increased revenues may be used, they nonetheless have a compelling need for increased earnings to provide financing, for capital improvements and equipment, in order to handle the significant increases in traffic levels which they have recently experienced.

(6) The magnitude of the Chessie System lines' program for capital improvements is described in the Complaint and will not be presented in further detail in this Affidavit. Suffice it to say that such program extends already in total to roundly $300,000,000, and all of the indicators we use every day tell us that this amount must be substantially increased in the near future.

(7) The planning of the necessary financing to implement this huge capital program is my responsibility and my abiding daily concern. Our plans, until we learned of the unexpected limiting conditions first advanced in the Commission's order of July 22, 1974, were to use the newly generated revenues derived from the Ex Parte No. 305 authorization as a basic foundation for such financing. But, the limiting conditions described in the Complaint and under attack in this proceeding will completely frustrate plaintiffs' plans to finance their capital improvement program through the use of the Ex Parte No. 305 revenues. Thus, the continued enforcement of these limiting conditions will result in increased financing costs to the immediate, irreparable damage of plaintiff railroads.

(8) By way of illustrating the kind of increased financing costs which stem directly from the limiting conditions imposed in Ex Parte No. 305, I should like to cite the fact that the plaintiff railroads now have a need for $15,000,000 to be used for the purpose of acquiring the steel necessary for the first 2,000 car lot of the car building program in our shops. If the Ex Parte No. 305 revenues are not available to pay for this steel, then the plaintiff railroads will be required to borrow funds for this purpose at today's high interest rates, thus irreparably damaging plaintiff railroads and the public they serve.

By contrast, if the Ex Parte No. 305 revenues were available, plaintiff railroads could finance the acquisition of the materials by using internal funds without having the cash position of the plaintiff railroads impaired or paying exorbitant interest rates. However, under the limiting conditions of this order the funds generated by Ex Parte No. 305 cannot be used to finance the acqui-

sition of these car construction materials. When this dilemma is viewed in the context of our overall improvement program, the unmistakable result will be a very substantial increase in the cost of that program, $25,000 a month for each lot of 2,000 hopper cars. Our present program contemplates construction of 10,000 hopper cars. The continued imposition of the limiting conditions during the pendency of the entire program will result in irreparable damage at the rate of $125,000 a month.

(9) As yet another illustration of the irreparable damages flowing from the order, the limiting conditions absolutely prohibit any railroad from using investment credit leasing as a financing method even for those projects which meet the criteria outlined in the order. This is so because of the language in the order dated July 22, 1974 which states that only those improvements which are capitalizable under the Commission's accounting regulations can be acquired with Ex Parte No. 305 funds. Thus, each day these limiting conditions remain in effect, plaintiff railroads are denied use of certain financing methods, all of which is to the immediate irreparable detriment of plaintiff railroads, their customers and the public.

(10) Yet another element of the irreparable damage flowing from the imposition of the limiting conditions is found in the difficulties of financing roundly $21,000,000 for 72 diesel locomotives, delivery of which is expected to start in December of 1974. Arrangements for this financing must be made within weeks. Without the use of the Ex Parte No. 305 revenues, the increased cost to our system lines in financing the acquisition of these locomotives will range from $26,000 to $52,000 per year for each of the fifteen years of the financing agreement. If the limiting conditions are not promptly lifted, plaintiff railroads will be forced to incur these additional costs, which costs can never be recovered.

(11) The overall adverse impact upon the plaintiff railroads and the public caused by the inability to use the newly generated Ex Parte No. 305 revenues can be most readily illustrated when it is considered that these frozen revenues total $500,000 for each and every

workday (250 days) per year. These are revenues paid our railroads daily by our customers, but for which the customers receive nothing in return. This is clearly irreparable damage to the public, for the inescapable reason that the public is receiving nothing for the additional money which it is paying to the plaintiff railroads. If the proceeding now before this Honorable Court should extend over six months, then, at the rate of $500,000 for each and every working day the total irreparable damage to the Chessie System lines and their customers will be $60,000,000.

(12) In the course of my duties as the chief financial officer of the plaintiff companies, I am in close touch with leading financial analysts, investment bankers, and others in the financial community who maintain continuing surveillance of our affairs in order that they may advise their clients and customers as to the standing, worth and value of the credit of the plaintiff railroads. I know, based upon my experience, that unless this Honorable Court grants the temporary restraining order requested of it, thus permitting the plaintiff railroads to use the newly generated Ex Parte No. 305 revenues, the investment community will reassess the financial situation of the plaintiff companies. Such reassessment can have only one result, namely to place the credit standing of the plaintiffs under adverse pressure. And the irony of all this is that, while the limiting conditions provide no benefit to anyone, the adverse effect of these limiting conditions could not come at a worse time for the plaintiff railroads in view of their need to finance the huge investment program described in the Complaint. This situation is manifestly injurious to the public interest, and constitutes irreparable damage in every sense.

/s/ J. T. Ford
J. T. FORD

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid this 16th day of August, 1974.

My commission expires April 22, 1978.

/s/ Deborah P. Ussery
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

Civil Action No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,

and

WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

AFFIDAVIT OF JAMES T. LYON

COMMONWEALTH OF VIRGINIA)
) To-wit:
CITY OF RICHMOND)

James T. Lyon, being first duly sworn, hereby deposes and says that:

(1) I am Assistant Vice President—Taxes for each of the plaintiff railroad companies, hereinafter referred to collectively as the "Chessie System lines." I have held positions of responsibility with respect to tax matters since 1962 with one or more of the plaintiff railroads.

(2) I am a graduate of the University of Chicago Law School and I have been a member of the Bars of the District of Columbia and Montana since 1948. I have also been a member of the Bar of the Supreme Court of the United States since 1955.

(3) The limiting conditions imposed by the Commission's orders of June 4, July 22 and August 12, 1974 prohibit Chessie System lines from using any revenues

collected as a result of the 10% rate increase while, at the same time, causing their state tax burden to increase substantially.

(4) Chessie System lines are required to charge their customers the new higher rates authorized in *Ex Parte 305*. In charging these higher rates, Chessie System lines incur very substantial additional federal and state tax liabilities. Paragraph 1b.1 of Appendix 1 to the Commission's order dated July 22, 1974 permits Chessie System lines to use Ex Parte 305 funds in connection with the federal and state tax liabilities attributable to the higher revenues only with respect to state and federal *income* taxes. Thus, while Chessie System lines can use Ex Parte 305 funds to pay the increased income tax liabilities attributable to those funds, they are denied access to these funds to pay the substantially increased state gross receipts taxes, franchise taxes and property taxes attributable to these funds. Since Chessie System lines are daily incurring these substantial tax liabilities, the result of the limiting conditions is serious, immediate irreparable damage to Chessie System lines, its customers and the public.

(5) State gross receipts taxes and franchise taxes clearly are not income taxes payable out of the segregated fund, but their amount will increase as revenue increases. Gross recepits and franchise taxes on $120,000,000 a year of increased revenues would amount to $230,000 a year, or $19,000 a month.

(6) State property taxes on railway property—the so-called "ad valorem" taxes clearly are not payable out of the segregated fund. In nearly all states in which the Chessie System lines operate, property taxes are based on a single statewide assessed value. The assessed value is derived from an average of the values computed by one, two, or three methods of valuation. Of these methods, the one given the greatest weight by the Chessie System states is a capitalization of the five-year average of gross income or net railway operating income or both. The income figures are taken from the annual reports filed by each railroad with the Interstate Commerce Commission. The result is that the increase in revenues attributable to *Ex Parte 305* will increase state property taxes in each of the five succeeding years. Despite this, Chessie System lines are prohibited from using the frozen funds to defray the increased tax liability attributable to such funds. This increased tax liability is being incurred daily by the Chessie System lines and is irreversible because the increased revenues must be recorded in the railroads' accounts in accordance with the Commission's rules and cannot thereafter be changed or modified in any way.

(7) While the amount of increase in property taxes cannot be calculated precisely (because of rate variations over the five-year future period involved, differences in the various state assessment formulas, and the like), its magnitude can be estimated from the fact that the Chessie System railroads paid $17.6 million of property taxes for the year 1973. As a matter of informed judgment, a ten percent increase in revenues should produce a two to three percent increase in property taxes. This means that the increased revenues should result in an increase of $350,000 to $520,000 a year in property taxes, or $30,000 to $45,000 a month.

/s/ James T. Lyon
JAMES T. LYON

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid this 16th day of August, 1974.

My commission expires April 22, 1978.

/s/ Deborah P. Ussery
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

Civil Action No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,

and

WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

AFFIDAVIT OF C. J. HENRY, JR.

COMMONWEALTH OF VIRGINIA)
) To-wit:
CITY OF RICHMOND)

C. J. Henry, Jr., being first duly sworn, hereby deposes and says that:

(1) I am Vice President, Pricing, for each of the plaintiff railroad companies. Since 1961, I have held positions of responsibility in the marketing and pricing area of one or more of the plaintiff railroads, hereinafter referred to collectively as the "Chessie System lines." As Vice President, Pricing, my duties include determination of the rate levels which the companies shall publish with respect to their merchandise traffic.

(2) The Commission granted the 10% increase in Ex Parte No. 305, but imposed limiting conditions which make it impossible for the Chessie System lines to use any of the revenues whatsoever in the conduct of their business. We are left with a sterile, useless fund, while

our competitors, who do have deferred maintenance and delayed capital improvements under the definition of the Commission's order, are able to use the proceeds of the increase accruing to them to improve their roadway and augment their equipment fleets. Instead of obtaining the means to strengthen our own railroad to give better service, we have had a severe disadvantage imposed upon us compared with other railroads with which we compete.

(3) We are in the position of collecting increased rates from our customers, but are prevented from using the proceeds to make improvements in plant and equipment for their benefit. The conditions attached to the increase effectively prevent the Chessie System from using the funds for the basic purpose for which they were authorized.

(4) We are in the position, in effect, of reporting phantom earnings. These are amounts which are shown as net earnings and taxable as such, but which cannot be used as working capital, and indeed cannot be utilized for any corporate purpose. This situation will significantly disadvantage us in negotiations with labor organizations, in our ordinary pricing negotiations with customers and in negotiations with our suppliers. Any enforced continuation of these limiting conditions will cause immediate irreparable damage.

(5) Plaintiff railroads suffer irreparable damage every day this situation continues in that they are subject, as in the case of all general rate increases, to losses of traffic, but which in this instance are not offset by the benefits of the rate increase. In weighing the advantages of seeking a general freight rate increase in this case as well as in past proceedings we must always consider the possibility that the increased rate levels will drive some of our shippers to other modes of common carrier transportation such as trucks or barges or to private carriage in their own equipment. In many cases such losses in traffic represent business gone forever, particularly where a shipper turns to private carriage and commits himself to the capital outlays necessary to acquire the necessary equipment. In these instances it is impossible to recoup such traffic for the railroad by any

subsequent rate adjustment, as the shipper, having made a large capital outlay, is compelled by the economics of the situation to continue his private operation.

(6) However, now faced with being unable to use the funds derived from the Ex Parte No. 305 increase, the lost traffic takes on a different complexion. Chessie will lose traffic and revenue without the offsetting benefit of the increased revenues from the traffic which will be retained. All such traffic losses will have an adverse effect upon Chessie Systems' real earnings.

(7) It is impossible to determine at this time the quantity of traffic diversion that will occur or the dollar loss to Chessie System by reason of the increase, but I do know that losses of specific traffic have resulted from every previous general rate increase. In past proceedings, however, this traffic loss was far more than offset by the resulting increase in our overall earnings. Such is not the case here. Chessie System lines suffer and will continue to suffer daily losses in terms of real earnings because of the limiting conditions.

(8) In summary, rate increases invariably result in some degree of permanent diversion as shippers resort to private carriage. Ordinarily the permanent diversions caused by rate increases are more than offset by the increased revenues available to the railroads. In this instance, however, no such offset is available as the conditions discriminatorily prohibit plaintiff railroads from making any use of the funds which are earmarked only for delayed capital expenditures or deferred maintenance. Unlike other railroads, the plaintiffs receive no benefit from the increase and indeed, are prejudiced thereby. They will not enjoy the use of the money because of their forethought in keeping their plant and equipment up to adequate levels. Unless this Honorable Court grants immediate relief, plaintiff railroads will not be able to use the segregated funds but will suffer from diversion of a portion of their traffic to their irreparable damage.

/s/ C. J. Henry, Jr.
C. J. HENRY, JR.

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid this 16th day of August, 1974.

My commission expires April 22, 1978.

/s/ [Illegible]
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. 74-0370-R

[Filed Aug. 18, 1974, Clerk, U. S. Dist. Court, Richmond, Va.]

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,

and

WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

TEMPORARY RESTRAINING ORDER

This day came the parties, plaintiff railroads, The Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railroad Company and Western Maryland Railway, by counsel, the Interstate Commerce Commission, by counsel, and the United States, by counsel, pursuant to plaintiff railroads' Motion for a Temporary Restraining Order and verified Complaint filed on August 15, 1974, seeking to restrain the enforcement of certain limiting conditions on the use of plaintiffs' revenues and of certain reporting conditions included in Orders issued by the Interstate Commerce Commission served June 4, July 22 and August 12, 1974, in a proceeding known as *Ex Parte No. 305*, Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974. A hearing was held before this Court on August 16, 1974, on oral notice to defendants and on the basis of oral argument by counsel, the verified Complaint and the affidavits of Messrs. Ford,

Henry and Lyon the Court finds that irreparable damage will result to plaintiff railroads in the following respects unless the defendants are restrained from enforcing the limiting conditions referred to above. The Court also finds that:

(1) By Orders dated June 4, July 22 and August 12, 1974, in a proceeding entitled Ex Parte No. 305, *Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974*, the Interstate Commerce Commission authorized the nation's railroads to publish a general increase in freight rates of 10% subject to certain terms and conditions and accounting and reporting requirements delineated in those Orders. The plaintiff railroads, hereinafter sometimes referred to as Chessie System lines, participated in the request for a 10% rate increase and upon receiving the Commission's Order of July 22, 1974, which for the first time specifically defined the uses to which the increased revenues generated by the Ex Parte No. 305 authorization could be put petitioned the Commission for reconsideration requesting that they be allowed to use the increased revenues for any valid corporate purposes. The petition for reconsideration was denied by the Commission's order of August 12, 1974, and the plaintiffs thereby exhausted their administrative remedies and brought this suit.

(2) The limitations placed upon the use of the Ex Parte No. 305 revenues in the Commission's Orders, hereinafter referred to as the limiting conditions, prohibit Chessie System lines from utilizing the funds derived from the Ex Parte No. 305 rate increase for any purpose other than delayed capital improvements or deferred maintenance programs. Chessie System lines have no deferred maintenance or delayed capital improvements within the meaning of the limiting conditions. As a consequence, they are deprived of the use of these funds.

(3) Chessie Systems' inability to use these segregated funds has resulted in the following immediate and irreparable elements of damage to the plaintiff railroads.

(a) Increases in State gross receipts taxes, franchise taxes and property taxes occasioned by the additional

revenues derived from Ex Parte No. 305 must be paid out of plaintiffs' general funds rather than from the Ex Parte No. 305 funds segregated by the Commission's Orders (Affidavit of J. T. Lyon).

(b) Chessie System is barred by the limiting conditions from using the segregated funds to finance a $300,000,000 capital improvements program designed to handle increased traffic levels (Affidavit of J. T. Ford).

(c) As a result this financing must be undertaken out of the plaintiffs' internal funds, imparing their cash position or by borrowing at higher interest rates (Affidavit of J. T. Ford).

(d) The limiting conditions further prohibit plaintiffs from utilizing investment credit leasing as a financing method (Affidavit of J. T. Ford).

(e) The limiting conditions, by preventing Chessie System lines from utilizing the Ex Parte No. 305 revenues, will cause reassessment of the financial situation of plaintiff companies, placing their credit standing under adverse pressure (Affidavit of J. T. Ford).

(f) The limiting conditions place Chessie System lines at a competitive disadvantage vis a vis other railroads who are able to use their Ex Parte No. 305 revenues to improve their roadway and augment their equipment (Affidavit of C. J. Henry, Jr.).

(g) The limiting conditions which freeze the additional Ex Parte No. 305 revenue actually cause an earnings loss rather than a gain. Plaintiffs have lost revenue to the extent their freight traffic has been diverted because of the Ex Parte No. 305 increase in rates, but they cannot use their revenue increases as an offset because of these limiting conditions (Affidavit of C. J. Henry, Jr.).

(4) Chessie System's inability to utilize the funds generated by the Ex Parte No. 305 increase has irreparably damaged the shipping public which is paying Chessie System increased freight charges at the rate of $500,000 per working day without receiving any benefit for their additional expenditures (Affidavit of J. T. Ford).

And it further appearing that plaintiff railroads have a probable right and that there is a probable danger that this right may be defeated unless this Order issues.

And it further appearing that the public interest requires the issuance of this Order and that the issuance of this Order causes no damage to defendants, it is

ORDERED, ADJUDGED and DECREED that the defendants be, and the same hereby are, restrained from enforcing the limiting conditions on the use of plaintiffs' revenues and of certain reporting conditions included in Orders issued by the Interstate Commerce Commission served June 4, July 22 and August 12, 1974, in a proceeding known as Ex Parte No. 305, Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974.

This Temporary Restraining Order shall remain in force only until the hearing and determination by the full three Judge Court pursuant to 28 U.S.C. §§ 2281, *et seq.*, and 2321, *et seq.*, at which time it shall expire unless prior thereto or at that time it be extended or a preliminary or permanent injunction granted.

The Court further ORDERS, ADJUDGES and DECREES that no bond be required of plaintiff railroads.

A true copy—Teste:

Clerk, U. S. District
Court

by: /s/ Deborah P. Ussery
Deputy Clerk

[SEAL]

Dated:

/s/ Robert R. Merhige, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. 74-0370-R

[Filed Oct. 9, 1974, Clerk, U. S. Dist. Court, Richmond, Va.]

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,

and

WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

AMENDED COMPLAINT

(1) Plaintiff, The Chesapeake and Ohio Railway Company (C&O), is a Virginia corporation and is a carrier by railroad subject to the provisions of the Interstate Commerce Act. Plaintiff, The Baltimore and Ohio Railroad Company (B&O), is a Maryland corporation and is a carrier by railroad subject to the provisions of the Interstate Commerce Act. Plaintiff, Western Maryland Railway (Western Maryland), is a Maryland corporation and is a carrier by railroad subject to the provisions of the Interstate Commerce Act. Collectively, these three carriers are referred to herein as the "Chessie System lines."

(2) This is an action to enjoin the enforcement of, annul and set aside those parts of the orders, served June 4, July 22, August 12 and October 7, 1974, of the Interstate Commerce Commission in a proceeding known as Ex Parte No. 305, Nationwide Increase of Ten Per-

cent in Freight Rates and Charges, 1974, which purport to impose conditions limiting the use of the revenues derived from such increased rates and charges and requiring certain reports with respect thereto, insofar as said conditions apply to the Chessie System lines. This action is brought pursuant to Section 2321 of Title 28 of the United States Code. Defendant, the Interstate Commerce Commission (the "Commission"), is an administrative agency of the United States Government located in Washington, D. C. The United States of America is named as a party defendant pursuant to 28 U.S.C. 2322.

(3) The jurisdiction of the Court is conferred under the provisions of 28 U.S.C. Sections 1336(a), 2284 and 2321-2325, inclusive. Venue is laid in this Court pursuant to 28 U.S.C. Section 1398(a), inasmuch as the Plaintiff, C&O, is a corporation organized and existing under laws of the Commonwealth of Virginia. A three-judge district court is requested pursuant to 28 U.S.C. 2325 and 2284.

(4) In its order served June 4, 1974, a true copy of which is attached hereto as Exhibit A, the Commission expressed its recognition that the nation's railroads are in need of additional freight revenues to offset recently incurred costs of materials and to provide an improved level of earnings; and further expressed its recognition that without the additional revenues to be derived from increased freight rates and charges, the earnings of the nation's railroads would be insufficient to enable them under honest, economical and efficient management to provide adequate and efficient railroad transportation services consistent with the public interest and the national transportation policy. The Commission then authorized such railroads to file schedules containing increased rates and charges, but subject to the conditions among others that:

> 3. Revenues generated by the increase should be expended for capital improvements and deferred maintenance of plant and equipment and the amount needed for increased material and supply cost, other than fuel. A record of such expenditures shall be maintained on a monthly basis.

4. At the end of the 3rd, 6th, and 9th months following the effective date of the increases, each carrier shall provide this Commission with an estimate of the freight revenues generated by the increases. Additionally, each carrier shall report the amount of expenditures made for deferred maintenance of plant and equipment, e.g., by type of car, track, cross ties, etc., as well as amounts expended for capital improvements by type of project. Furthermore, each carrier shall report the amount of unexpended funds derived from the authorized increases and how those funds are to be expended.

The June 4, 1974 order imposed no conditions requiring the segregation of such increased revenues, nor did it provide any definition of the terms "deferred maintenance" or "capital improvements" as used in condition No. 3 above.

(5) Thereafter, on June 5, 1974, the nation's railroads proceeded in good faith to publish the increased schedules, effective June 20, 1974.

(6) Subsequently, by its order served July 22, 1974, a true copy of which is attached hereto as Exhibit B, the Commission imposed further conditions to its prior authorization of June 4 which, for the first time, purport to require segregation of the increased revenues; purport strictly to limit the use of at least 7 percentage points of the 10% authorization to "deferred maintenance" and to "*delayed* capital improvements" *as defined in the July 22 order* (up to 3 percentage points may be applied to increased expense of materials and supplies, except fuel); and purport to impose certain detailed accounting and reporting requirements, far broader in scope than those suggested by condition 4 of the June 4 order, which are designed to implement the foregoing conditions with respect to the segregation and use of such revenues.

(7) The order of July 22 defines deferred maintenance to be "accrued deterioration" in a railroad's plant or equipment which has rendered its services to shippers "partially or wholly inadequate and/or has resulted in diminishing the railroads' competitive ability." The

Chessie System lines' expenditures for maintenance of plant and equipment do not in any sense qualify under the Commission's definition. Chessie System lines have no deferred maintenance within the meaning of the term as used by the Commission. Chessie System lines' plant and equipment are kept in regular repair and their maintenance program is adequate to meet the needs of their shippers considering the volume and frequency of their shipments. Chessie System lines' expenditures for capital improvements likewise also do not qualify under the Commission's definition which specifies "delayed" capital improvements which were "actually planned" but not undertaken because "funding or financing was not available or projected to be available through June 30, 1975."

(8) Chessie System lines petitioned the Commission for reconsideration and amendment of the order of July 22. In this petition for reconsideration, Chessie System lines claimed the unfettered right to use revenues attributable to the Ex Parte No. 305 rate increase for "any valid corporate purpose." Chessie System lines' petition for reconsideration was denied by the Commission's order served August 12, 1974, a true copy of which is attached hereto as Exhibit C.

(9) On October 7, 1974, the Commission, acting on pleadings filed by parties other than plaintiffs issued another order in Ex Parte No. 305, a true copy of which is attached hereto as Exhibit D. The order provides, *inter alia*, that any respondent "unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2." The order requires service of any petitions for relief upon all parties of record in Ex Parte No. 305, and such parties are granted ten days in which to respond to such petitions. Significantly, even if approval is obtained, the order served October 7, 1974, restricts the uses to which the Ex Parte No. 305 revenues may be applied, for it defines new and additional capital improvement as being projects "over and above those presently undertaken, scheduled or otherwise com-

mitted . . ." Thus, even if Chessie were to apply for and obtain the approval of the Commission as provided for in the order served October 7, 1974, Chessie System lines would never be able to use those funds for capital improvements undertaken, scheduled or otherwise committed prior to October 7, 1974.

(10) Under the terms of the new order of October 7, 1974, plaintiffs are not relieved from any of the terms and conditions of the Commission's orders of June 4, 1974, July 22, 1974, or August 12, 1974. The revenues generated from the Ex Parte No. 305 increase would still remain dormant in a segregated account unless prior approval is obtained from the Commission for their expenditure on an as yet undetermined future capital improvement program. Moreover, each and every time plaintiffs desire to implement new capital programs they are required to apply to the Commission for its approval of said projects and its consequent authorization to use Ex Parte No. 305 funds for such limited and restricted purposes.

(11) All of the purported conditions in the June 4, July 22, August 12 and October 7 orders which relate to segregation and restricted use of the increased revenues attributable to the Ex Parte No. 305 rate increase are hereafter referred to as the "limiting conditions," and all conditions in such orders which purport to impose accounting and reporting requirements are hereafter referred to as the "accounting and reporting conditions." The Chessie System lines have exhausted their administrative remedies with respect to the accounting and reporting conditions referred to above. All those provisions of the Commission's attached orders in Exhibits A, B, C and D which purport to impose such limiting conditions and accounting and reporting conditions constitute those parts of such orders which the Chessie System lines seek in this action to annul, as applied to such lines, to to enjoin the enforcement of, as applied to such lines. All such limiting conditions and accounting and reporting conditions, as applied to Chessie System lines, should be nullified and declared void by this Honorable Court and the enforcement thereof against such lines should be

permanently enjoined, for the reasons and upon the grounds which follow.

(12) The net result of the limiting conditions contained in the orders served June 4, July 22 and August 12, 1974 is that under the Commission's definitions of deferred maintenance and delayed capital improvements, the Chessie System lines will be unable to apply any of the increased revenues derived from the Ex Parte No. 305 proceeding (other than those earmarked for increased material and supply costs) to any projects now scheduled or which may be scheduled in the foreseeable future. No worthwhile project on Chessie System lines designed to improve its transportation service to the shipping public has ever been deferred because financing or funding was not available. None will be as long as the Chessie System lines' earnings are at levels adequate enough to attract capital. Chessie System lines have never stinted in their expenditures to provide adequate and efficient transportation service to their customers. Moreover, even if Chessie System lines were to apply for and obtain the approval referred to in the order served October 7, 1974, Chessie System lines would still be unable to apply any of the increased revenues derived from the Ex Parte No. 305 proceeding to any of the projects now undertaken, committed or otherwise scheduled as described below.

(13) On May 13, 1974, the respective Boards of Directors of The Baltimore and Ohio Railroad Company and The Chesapeake and Ohio Railway Company authorized massive capital expenditure programs totaling $78,874,143 for the B&O and $45,014,426 for C&O, a grand total of $123,888,569. The programs include, among other things, the acquisition by B&O of 3,000 100-ton hopper cars and 62 3,000-horsepower 4-axle general purpose diesel locomotives. C&O is to acquire an additional 2,000 100-ton hopper cars and 10 3,000-horsepower diesel locomotives. Chessie System lines have an adequate car supply and other facilities for hitherto normal levels of traffic—i.e., levels in existence prior to the onset of the energy crisis. The acquisition of the additional equipment mentioned above is necessary to

meet very substantial increases in coal production at C&O/B&O origin mines which have just opened or which will open in the future. Starting in June, 1974, a total of 55 new mines began to come on line at C&O/B&O origin points. This is new traffic for which, until now, there have been no equipment needs. The total production of these new mines will exceed 28 million tons annually. Twenty of the total group of 55 new mines have already begun production.

(14) The commitment to acquire the new equipment was made, of course, in anticipation that Chessie System lines' earnings would be at levels sufficient to support the programs. The Boards acted with full assurance from management that the necessary financing would be forthcoming. They would not have approved the program without such assurances, for Boards do not act on programs of this magnitude on the basis of contingencies. It should be noted further that the commitments by the Boards were made after the filing of the railroads' petition of April 22, 1974 which initiated Ex Parte No. 305. However, under the Commission's definition, these significant expenditures do not qualify because the program had not been deferred because funding or financing was not available.

(15) On June 17, 1974, the respective Boards of Directors of the B&O and C&O authorized additional capital expenditures totaling $25,427,995 for B&O and $19,547,995 for C&O covering the acquisition of additional new equipment. These, too, would not qualify under the Commission's definition because the projects cannot be said to have been deferred for the reason that funding or financing was not available. These are new projects designed to handle new traffic.

(16) As previously stated, Chessie System lines have never lacked financing for those capital expenditures which they deemed necessary to provide adequate and efficient transportation service for their customers. Their customers have not suffered because the System had to defer needed capital improvements and this fortunate circumstance will continue as long as Chessie System lines' earnings are adequate enough to attract capital.

(17) The May and June Board actions described above tell only part of the story. Chessie System lines' total planned capital expenditures are $300 million. This sum will be used to purchase 72 diesel locomotives, 10,000 coal cars and 2,714 merchandise cars. Considering the rapidly rising prices of steel and other materials, the final sum expended will be well in excess of $300 million. Further, since coal tonnage on the Chessie System lines is growing at a pace faster than that of other major coal hauling railroads, significant additional equipment authorizations can be expected. Chessie System knows of no project now in planning on its system included in the $300 million program which it would have to defer because financing or funding is not available. With Chessie System's credit rating and assuming earnings are adequate, funds will be forthcoming for capital improvements albeit at extremely high interest rates.

(18) Chessie System lines committed in May and June, 1974, a total of $168,864,559 in expenditures for capital improvements. None of these capital improvements is "delayed" or "new and additional" as those terms are defined in the orders here in issue. Accordingly, the limiting conditions operate to prohibit Chessie System lines from applying the approximately $500,000 per day in Ex Parte No. 305 revenues to this very substantial, long-range capital improvement program. Unless they are permitted to apply these additional revenues to their May and June commitments and to the other commitments they have made in the total $300 million program, they will be unable to make use of these revenues. Such revenues will simply lie dormant in a sterile, segregated account which will result in several serious consequences both to Chessie System lines and the shipping public.

(19) First, the limiting conditions place Chessie System at a distinct competitive disadvantage vis-a-vis other railroads, which for one reason or another have deferred maintenance or delayed capital improvements within the meaning of the Commission's order. These lines will be able to use the additional revenues to buy cars and other equipment while Chessie System's money will lie fallow, unusable with respect to the very substantial, long range

capital improvement program described in paragraphs 13 through 18 above. In effect, the limiting conditions penalize Chessie System and other efficient carriers and reward only those railroads which are inefficient, in direct contravention of the national transportation policy (49 U.S.C., preceding s.1) which Congress has provided for the Commission's explicit direction in administering the Interstate Commerce Act, and in direct contravention of Section 15a(2) of the Act itself (49 U.S.C. 15a(2). For this reason alone the Chessie System lines will suffer irreparable damage unless the injunctive relief prayed for herein is granted by this Honorable Court. Absent such relief, the Chessie System lines will suffer further irreparable damage by reason of the fact that they will be required to pay Federal income taxes, at a rate of 48%, on the sterile "income" in the segregated account prescribed by the limiting conditions and by the accounting and reporting conditions.

(20) The limiting conditions also penalize Chessie System lines' customers. They must pay increased freight rates which Chessie System lines may not use, in turn, to make the improvements in plant and equipment already planned for their benefit. They are, in effect, paying something for nothing. This is inflation at its worst, and is squarely at cross purposes with the national transportation policy and the laudable objectives of the Interstate Commerce Act, and in fact, inconsistent with the clear intention expressed by the Commission itself in its original order of June 4, 1974.

(21) Insofar as the Chessie System lines are concerned, the Commission clearly exceeded its statutory authority by conditioning the use to which the revenues derived from Ex Parte No. 305 might be applied. There is no evidence of record in the proceeding before the Commission that could support a finding that, as applied to the Chessie System lines, the increases in rates and charges would be unjust and unreasonable without the imposition of the limiting conditions. Thus such purported limiting conditions, as applied to the Chessie System lines, are void and of no force and effect.

(22) In view of the foregoing, the limiting conditions are unlawful as applied to the Chessie System lines and should be set aside for the reasons and upon the grounds that—

(a) there is no warrant in law and fact for such conditions;

(b) there is no rational basis for, or statutory authority for, the Commission's action in imposing such conditions;

(c) the imposition of such conditions constitutes a denial of due process of law;

(d) the imposition of such conditions violates the public policy of the United States as prescribed by Congress in the national transportation policy, and is in violation of the Interstate Commerce Act;

(e) the imposition of such conditions is arbitrary, capricious, discriminatory and an abuse of the Commission's discretion; and

(f) the imposition of such conditions is unsupported by any evidence of record, substantial or otherwise.

(23) The accounting and reporting conditions, which have no purpose except to implement the unlawful limiting conditions, also are subject to each of the legal infirmities enumerated in paragraph 22, and are therefore unlawful as applied to the Chessie System lines.

(24) If the relief prayed for in this action is granted, the Chessie System lines will then be able to apply the increased revenues to their capital improvement program described and cash from such revenues could then be included in working capital, thus increasing the bond ratings of the Chessie System lines and enabling them to borrow money for improvements at lower rates of interest.

WHEREFORE, Plaintiffs respectfully pray:

(1) That a court of three judges be constituted and convened pursuant to 28 U.S.C. 2284 and 2321-2325, inclusive.

(2) That in accordance with 28 U.S.C. 2284(3) the operation and effect of the limiting conditions and the accounting and reporting conditions, as applied to Plaintiffs, be temporarily restrained until a hearing and determination by the full three-judge court.

(3) That the court of three judges issue an interlocutory injunction staying and suspending the operation and effect of said limiting conditions and accounting and reporting conditions, as applied to Plaintiffs, pending final hearing and determination of this suit.

(4) That the court of three judges, upon final hearing of this suit, enter a decree permanently enjoining, setting aside and annulling the said limiting conditions and accounting and reporting conditions, as applied to Plaintiffs.

(5) That the court grant such other and further relief as it may deem fit and proper and as equity may require.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY
THE BALTIMORE AND OHIO
RAILROAD COMPANY
WESTERN MARYLAND RAILWAY

By /s/ [Illegible]
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* * * * *

[Appendices omitted]

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,

and

WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

JOINT ANSWER OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

Defendants, the United States of America and the Interstate Commerce Commission, answer the amended complaint as follows:

I.

As a first separate, complete and independent defense to the allegations of the amended complaint, defendants aver that the amended complaint fails to state a claim upon which relief can be granted, and that this Court is without jurisdiction over the subject matter of this suit, since the orders of the Interstate Commerce Commission complained of are orders involving the suspension of rates and charges under the Interstate Commerce Act, which are not subject to judicial review.

II.

As a second separate, complete and independent defense to the allegations of the amended complaint, de-

fendants aver that the amended complaint fails to state a claim upon which relief can be granted, and that this Court is without jurisdiction over the subject matter of this suit, since plaintiffs have failed to exhaust their administrative remedies in Ex Parte No. 305.

III.

As a third separate, complete, and independent defense to the allegations of the amended complaint, defendants aver that plaintiffs should be equitably estopped from raising any argument that the conditions imposed on the use of funds derived by the nation's railroads as a result of increases authorized in Ex Parte No. 305 are in any way unlawful or improper, or that the Interstate Commerce Commission is without power to impose such conditions, since plaintiffs have collected and continue to collect revenues from increases which were filed pursuant to the authorization and subject to the terms and conditions of the Commission's orders entered in Ex Parte No. 305.

IV.

As a fourth separate, complete and independent answer to the allegations of the amended complaint, defendants:

1. Admit the allegations of paragraph (1).

2. Admit the allegations of paragraph (2) except deny that the Interstate Commerce Commission orders referred to merely purport to impose conditions as stated, and aver that such orders lawfully and properly impose such conditions on the nation's railroads, except only as the temporary restraining order currently in effect in this action presently relieves plaintiffs from a duty to comply.

3. Deny the allegations of the first sentence of paragraph (3). Admit the remaining allegations of paragraph (3).

4. In answer to the allegations of paragraph (4), respectfully refer the Court to the text of the Commission's order served June 4, 1974 (Exhibit A to amended complaint) for a complete and true statement of its contents.

5. Admit the allegations of paragraph (5).

6. In answer to the allegations of paragraph (6), respectfully refer the Court to the text of the Commission's order served July 22, 1974 (Exhibit B to amended complaint) for a complete and true statement of its contents.

7. In answer to the allegations of the first sentence of paragraph (7), respectfully refer the Court to the text of the Commission's order served July 22, 1974 (Exhibit B to amended complaint) for a complete and true statement of its contents. Deny the remaining allegations of paragraph (7).

8. In answer to the allegations of paragraph (8): Admit the allegations of the first sentence. In answer to the allegations of the second sentence, respectfully refer the Court to the petition referred to for a complete and true statement of its contents. In answer to the allegations of the third sentence, admit that the Chessie System lines' petition was denied, but respectfully refer the Court to the text of the order referred to for a complete and accurate statement of its contents.

9. In answer to the allegations of paragraph (9), admit that the order of October 7, 1974 (Exhibit D to Amended Complaint) referred to was issued, but respectfully refer the Court to the text of that order for a complete and true statement of its contents. Further, deny that plaintiffs are unable to use all Ex Parte No. 305 revenues either with or without approval as set forth in the October 7 order, for purposes consistent with the commission's orders in Ex Parte No. 305.

10. In answer to the allegations of the first sentence of paragraph (10), respectfully refer the Court to the text of the October 7 order for a complete and true statement as to the matters alleged. Deny the allegations of the second sentence. In answer to the allegations of the third sentence, respectfully refer the Court to the text of the October 7 order for a complete and true statement as to the matters alleged.

11. The allegations of the first sentence of paragraph (11) require no answer. Deny the allegations of the second sentence. The allegations of the third sentence

require no answer. Deny the allegations of the fourth sentence.

12. State that the allegations of paragraph (12) are argumentative and require no answer; to the extent facts may be deemed alleged thereby, the allegations are denied.

13. State that they are without knowledge or information sufficient upon which to form a belief as to the truth of the allegations of paragraph (13).

14. State that the allegations of paragraphs (14), (15), (16), and (17) are argumentative and require no answer; to the extent facts may be deemed alleged thereby, state that they are without knowledge or information sufficient to form a belief as to the truth of such allegations.

15. State that they are without knowledge or information sufficient upon which to form a belief as to the truth of the allegations of the first sentence of paragraph (18). The remaining allegations of paragraph (18) are argumentative and require no answer; to the extent facts may be deemed alleged thereby, the allegations are denied.

16. State that the allegations of paragraph (19) and (20) are argumentative and require no answer; to the extent facts may be deemed alleged thereby the allegations are denied.

17. Deny each and every allegation of paragraphs (21), (22) and (23).

18. State that the allegations of paragraph (24) are argumentative and require no answer; to the extent facts may be deemed alleged thereby the allegations are denied.

16. Except as expressly admitted herein, deny each and every allegation of the complaint.

V.

In further answer to the allegations o fthe complaint, defendants aver as follows:

1. The petition of the nation's railroads (including plaintiffs) filed with the Commission on April 22, 1974, seeking, *interalia*, an increase in rates and charges in

all territories of ten percent over then-current levels to become effective May 2, 1974, or as soon thereafter as possible, principally emphasized the need of the railroads to apply revenues derived from the requested increase to deferred maintenance of plant and equipment and capital improvement projects.

2. By order served April 30, 1974, the Commission, *inter alia*, denied the railroads' petition of April 22, 1974, insofar as it sought to make effective the ten percent increase on ten days' notice (see Exhibit 1 hereto).

3. By order served May 3, 1974 (Exhibit 2 hereto), the Commission, *inter alia*, authorized the railroads to file tariffs and supplements implementing their proposed increase on thirty days' notice, and directed that statements opposing such action be filed on or before May 24, 1974, and that replies to such statements be filed on or before May 29, 1974.

4. The nation's railroads (including plaintiffs) duly filed their reply on May 29, 1974, in which, *inter alia*, they reaffirmed earlier statements in the proceeding that a principal justification for the increase was to apply additional revenues to deferred maintenance of plant and equipment and capital improvements.

5. By its order served June 4, 1974 (Exhibit A to amended complaint), the Commission, *inter alia*, acknowledged the need of the nation's railroads for an increase, but found that the increase as filed would be unjust and unreasonable without conditions designed to promote service improvements. Accordingly, the Commission ordered the railroads' increase suspended, without prejudice to the refiling of a new increase incorporating such conditions, should the railroads elect to cancel the prior increase. Among the conditions set forth in the June 4 order was that the increase should be expended for capital improvements and deferred maintenance and equipment and the amount needed for increased material and supply cost, other than fuel. The Commission stated in that order, *inter alia*: "Accordingly, as previously indicated, the Commission intends that revenues generated by increases authorized herein, over and above the amount needed for increased material

and supply costs, other than fuel, will be used by the respondents exclusively for reducing deferred maintenance of plant and equipment and delayed capital improvements in order that rail services to the shippers will be improved."

6. Following the issuance of the Commission's June 4, 1974, order, the nation's railroads (including plaintiffs) cancelled the prior increase, and on June 5, 1974, filed a new increase pursuant to the terms and conditions of the June 4 order. By so acting, the railroads (including plaintiffs) accepted the terms and conditions of that order.

7. Following the issuance of the Commission' order served July 22, 1974 (Exhibit B to amended complaint), which refined and interpreted the conditions imposed in the June 4 order, plaintiffs on July 30, 1974, filed a petition for reconsideration which, *inter alia*, sought amendment of the conditions imposed by the Commission by including a phrase to the effect that a railroad, if it has no deferred maintenance or delayed capital improvements as defined by the Commission, may expend funds generated by the increase for any valid corporate purpose. Plaintiffs' petition also raised for the first time the argument that the Commission is without power to impose conditions, notwithstanding that plaintiffs were then and are now participating in the increase authorized by the June 4 order.

8. Following issuance of its order served August 12, 1974 (Exhibit C to amended complaint), which, *inter alia*, denied plaintiffs' June 30, 1974 petition; and following the filing of the instant suit on August 15, 1974; the nation's railroads (not including plaintiffs) on August 16, 1974, filed a petition for leave to file a supplemental petition, and a supplemental petition for clarification and modification of the Commission's orders served July 22 and August 12, 1974. Plaintiffs, on August 20, 1974, filed a reply to the railroads' supplemental petition which, *inter alia*, stated that such petition was not filed on plaintiffs' behalf. In response to these petitions and others, the Commission, by order served August 22, 1974 (Exhibit 3 hereto), reopened the

matter and set oral argument, to be held on August 27, 1974, for the purpose of affording the parties an opportunity to show cause why the orders entered thus far should not be observed in all respects and compliance had forthwith. Counsel for the railroad petitioners and for the plaintiffs herein were directed to appear and be prepared to orally show cause why any change should be made in the conditions and requirements thus far imposed.

9. Plaintiffs, on August 26, 1974, filed an Objection to the order served August 22, 1974, which argued, *inter alia*, that the Commission was without jurisdiction to order them to appear at oral argument on August 27, 1974, and that such appearance might constitute a waiver of their right to judicial review in this suit. By order served August 26, 1974 (Exhibit 4 hereto), the Commission overruled plaintiffs' Objection and stated, *inter alia*, that the Commission is empowered to reopen its proceedings at any time notwithstanding that a judicial review action has been filed, and that the order served August 22, 1974, does not interfere with any exercise of jurisdiction by this Court.

10. The oral argument was duly held before the Commission on August 27, 1974. Notwithstanding the Commission's order served August 26, 1974, plaintiffs deliberately sent a representative to the argument who was uninformed about the matters in issue and specifically directed not to participate or answer questions from the Commission. Upon questions being asked of him, this representative replied either that he did not know the answer, or that he was instructed not to answer. He reiterated the arguments made in plaintiffs' Objection, by reading to the Commission a portion of that Objection. The other railroads, and a number of other parties, presented arguments on the merits of the proceeding.

11. On October 7, 1974, the Commission, as a result of the reopened proceedings in which plaintiffs refused to participate, served an order (Exhibit D to amended complaint; Exhibit 5 hereto) which substantially modifies the terms and conditions set forth in prior orders. The October 7 order provides, *inter alia*:

It is further ordered, That railroad respondents, if any, which are unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined in this proceeding, may expend such finds for new and additional capital improvements providing advance approval is obtained from the Commission, Division 2, as above set forth:

12. The procedure set forth in the October 7 order affords plaintiffs an opportunity to utilize funds generated by the increase for new and additional capital improvements, if they can show that they cannot use the funds for deferred maintenance and delayed capital improvements, as those terms have been defined by the Commission. Thus far, plaintiffs have merely asserted that they cannot so use the funds, and have never attempted to support such assertions before the Commission with valid, probative evidence. Upon its best information without reports having been filed by plaintiffs pursuant to orders entered in Ex Parte No. 305, the Commission believes that plaintiffs in fact do have deferred maintenance of plant and equipment and delayed capital improvements, as those terms have been defined in Ex Parte No. 305.

13. Since plaintiffs failed to participate in the administrative proceedings immediately preceding the issuance of the October 7 order, and have further failed to avail themselves of the procedures set forth in that order, they are precluded from attacking the provisions of that order before this Court.

14. The orders entered in Ex Parte No. 305 are lawful and proper in all respects.

WHEREFORE, defendants pray that the amended complaint be dismissed, the temporary restraining order currently in effect be dissolved, and all relief be denied.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 18th day of October, 1974, I served copies of the foregoing Joint Answer on counsel for all parties of record by first-class, mail postage prepaid.

/s/ Hanford O'Hara
Attorney

* * * * *

[Exhibits omitted]

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,

and

WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

Defendants, the United States of America and the Interstate Commerce Commission, hereby move to dissolve the temporary restraining order entered herein on August 18, 1974, and currently in effect. As grounds therefor, defendants state that material changes in the circumstances of the case have taken place since the temporary restraining order was originally entered, and that under applicable law, its continuation cannot be justified. In further support of this motion, defendants rely on matters stated in the attached Memorandum in Support of Motion to Dissolve Temporary Restraining Order.

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IN THE UNITED STATES DISTRICT COURT
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THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
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v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

MEMORANDUM IN SUPPORT OF MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

STATEMENT

By its temporary restraining order entered on August 18, 1974, this Court has restrained the defendants from enforcing against plaintiffs certain conditions relating to the use of revenues derived from a recent 10% rate increase authorized in Ex Parte No. 305, *Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974*. These conditions were specified in orders dated June 3, July 18, and August 9, 1974, and provide generally that amount over 3% collected under authority of Ex Parte 305 must be spent on deferred maintenance and delayed capital improvements, that such amounts

must be reflected in a separate account (Account 716) and that the carriers must furnish certain reports to the Commission. A complete discussion of the conditions appears in the Joint Brief of the United States of America and the Interstate Commerce Commission filed concurrently herewith (see pp. 1-11), which Brief is incorporated herein by reference.

The temporary restraining order provides that it shall remain in force until hearing and determination of this action by the three-judge court, "at which time it shall expire unless prior thereto or at that time it be extended or a preliminary or permanent injunction granted." It is defendants' contention that the continuation of the temporary restraining order cannot be justified any longer because of significant changes in circumstances. Accordingly, the temporary restraining order should, after appropriate hearing, be dissolved forthwith. This argument is supported by changes in the circumstances of the case.

AUTHORITIES RELIED UPON

As the basis for their motion to dissolve the temporary restraining order, defendants rely upon decisions of the Fourth Circuit which set the standards for preliminary injunctive relief. As the Court stated in *West Virginia Highlands Conservancy* v. *Island Creek Coal Co.*, 441 F.2d 232, 235 (4th Cir. 1971):

> The factors to be considered by the district judge have long been settled in this circuit:
>
> > [I]t is sufficient if the court is satisfied that there is a probable right and a probable danger and that the right may be defeated, unless the injunction is issued, and considerable weight is given to the need of protection to the plaintiff as contrasted with the probable injury to the defendant * * *

Further (at 236):

The public interest is also a relevant consideration. Yakus v. United States, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834 (1944); Huard-Steinheiser, Inc. v. Henry, 280 F.2d 79 (6 Cir. 1960). Usually the public interest comes into play when an injunction is sought to restrain enforcement of a statute or a regulation designed to further the public interest, and then it is sometimes concluded that a private party must suffer the risk of irreparable injury rather than to restrain the enforcement of that which, although it may be later determined to be invalid, is designed to further the public good.

ARGUMENT

Under the standards for preliminary injunctive relief which apply in this Circuit, the continuation of the temporary restraining order presently in effect cannot be justified. First, plaintiffs cannot show any injury justifying protection. Not only is it established that in all probability they have sufficient deferred maintenance and delayed capital improvements to fully expend Ex Parte 305 revenues, but also they have an administrative remedy available in the event they do not. Second, plaintiffs do not have a probable right to relief in this suit, and defendants have a far greater chance of ultimate success. Third, the public interest requires that the temporary restraining order be dissolved, and that plaintiffs forthwith be brought into compliance with the Commission's orders.

a. *Injury to Plaintiffs*

The temporary restraining order finds that enforcement of the Ex Parte No. 305 conditions against plaintiffs would irreparably harm them. Such is clearly no longer the case, even if initially it was.

The Chessie System Lines have more than sufficient deferred maintenance and delayed capital improvements on which to spend their Ex Parte 305 revenues. This is established by the Affidavit of Edward P. Johnson (Exhibit A hereto), which analyzes in detail Chessie's own reports to the Commission and finds substantial shortfalls in deferred maintenance alone. As to replacement of rail cross ties, Mr. Johnson finds that Chessie's average annual replacement rate between the years 1954-1973 is 1.69% of the total ties in place. This works out to an average tie life of 59 years, which is considerably in excess of norms accepted in the industry. The railroads' own view, as reflected in the "ASTRO Report",[1] is that cross ties have a life of 35 years. The inability of the Chessie Lines to meet this standard represents deferred maintenance of $92.8 million. Even using a more conservative tie life of 40 years, deferred maintenance amounts to $60.8 million. (Johnson Affidavit, at pp. 2-3).

By way of comparison, Mr. Johnson analyzed the situation of the two other railroads, Southern Railway (chosen because it is one of the more profitable railroads in the country), and Norfolk & Western Railway (chosen because it has operating characteristics somewhat similar to the Chessie Lines). Both these railroads have considerable deferred maintenance of ties, and have admitted as much in reports to the Commission (see Johnson Affidavit, p. 4).

A similar analysis is made of deferred maintenance of rail. This shows that the Chesapeake & Ohio has deferred maintenance of rail of $44.4 million, and that Baltimore & Ohio has deferred maintenance of rail of $36 million. The comparison roads, Southern and Norfolk and Western, both showed substantial deferred maintenance of rail. (Affidavit, at pp. 4-7). In addition, the affidavit shows an increased incidence of derailments due to defects in track and roadbed on the Chessie Lines, from 87 in 1964, to 240 in 1973—an increase of 176%.

The Class I railroads nationwide (except plaintiffs) reported $2.56 billion in deferred maintenance of roadway, $337 million in deferred maintenance of equipment,

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[1] "The American Railroad Industry: Prospectus", a report of America's Sound Transportation Review Organization, June 30, 1970, compiled for the Association of American Railroads.

$2.17 billion in delayed capital improvements of roadway, and $2.1 billion in delayed capital improvements of equipment—totaling $7.16 billion (see Exhibit B, summary of Ex Parte 305 reports of deferred maintenance and delayed capital improvements.)[2] By contrast, expected revenues are only $1.2 billion.[3] In the face of this evidence, which both analyzes Chessie's own performance and compares it to other carriers which have reported, Chessie's assertion that it has no deferred maintenance or delayed capital improvements—and is thus required to keep unusable funds in Account 716—is impossible to believe.

However, even if the Chessie Lines are correct in their assertion that they have no deferred maintenance or delayed capital improvements, they still can show no injury justifying a temporary restraining order. By its order of October 3, 1974, the Commission authorized any carrier believing itself unable to expend Account 716 funds as directed to apply to the Commission for permission to use the funds for "new and additional capital improvements". In their brief on the merits plaintiffs argue at length that this modification of the requirements does not help them, but the fact remains that they have steadfastly refused to file such an application. Since the gravamen of their original complaint was that the orders prior to that of October 3 precluded them from applying the funds to a whole range of new capital projects, the October 3 order affirmatively establishes that there is no longer, if there ever was, any irreparable injury to plaintiffs.

These facts show that plaintiffs are completely without any irreparable injury, or in fact any injury at all. Rather than showing harm of any kind, plaintiffs' sub-

[2] The comparison railroads showed as follows: deferred maintenance roadway, Southern 41,800,000, N&W 61,467,000; deferred maintenance equipment, Southern, 0, N&W, $8,032,000; delayed capital improvements roadway, Southern $119,964,000, N&W, $78,491,000; delayed capital improvements equipment, Southern, $40,600,000, N&W, $87,992,000.

[3] Southern reported estimated increased revenues of $63,892,000, and N&W increased revenues of $88,765,000.

missions to this Court thus far show only a desire to spend the funds as they see fit. But as we next show, plaintiffs have no probable right to relief in this case and are unable to show any probability of ultimate success in this suit.

b. *Probable Right to Relief*

As fully discussed in our Joint Brief to this Court, plaintiffs have no probable right to relief in this suit, and defendants have shown a substantial probability that they, and not plaintiffs, will ultimately succeed on the merits. As we demonstrate in that Brief:

1. The Commission's orders are not judicially reviewable because they are part of the suspension process, which is agency action committed to agency discretion (pp. 14-17). Further, the orders are unreviewable because plaintiffs have failed to exhaust administrative remedies (pp. 17-19).

2. Plaintiffs should be equitably estopped from maintaining this suit, since they have attacked the conditions of the rate increase while at the same time enjoying the benefits of the increase (pp. 19-21).

3. The Commission has the power to suspend and investigate a rate increase, while at the same time allowing the increase to go into effect without suspension and investigation but subject to conditions reasonably designed to promote service improvements (pp. 22-28).

4. The particular conditions adopted in Ex Parte 305 are reasonable and lawful, and the Commission's orders are not substantially or procedurally defective in any way (pp. 29-42).

c. *The Public Interest*

As the Court pointed out in *West Virginia Highlands Conservancy* v. *Island Creek Coal Co.*, 441 F.2d 232, 236 (4th Cir. 1971), there are occasions where the public interest requires that preliminary injunctive relief be denied even if a private party runs the risk of irreparable injury. Where, as here, there is no showing of

irreparable injury, the public interest compels all the more that the temporary restraining order be dissolved.

The Commission in Ex Parte No. 305 has identified deferred maintenance and delayed capital improvements as the major areas of concern in railroad operations. It has noted that the overall quality of service has tended to deteriorate despite periodic general increases of the type here involved. And it has found that, except for the first 3% of the increase which may be devoted to increased material and supply costs, revenues must be devoted to deferred maintenance and delayed capital improvements. This is a rational judgment, acquiesced in by virtually every railroad in the country other than plaintiffs.

The Ex Parte 305 record also identifies the problems of the shipping public. As is more fully discussed in our Joint Brief, many shippers are concerned not only over the increase itself, but also over the question of uses to which the revenues will be put. The Commission's decision to authorize the immediate implementation of the increase subject to conditions is an accommodation of the railroads' interest in revenues and the shippers' interest in improved service. The exemption of the Chessie Lines from these requirements cannot be justified any longer.

Moreover, the reports filed by the nation's railroads show that the revenues to be derived from this increase are nowhere near the amount of deferred maintenance and delayed capital improvements. Revenues total about $1.2 billion for all railroads, while maintenance and improvements amount to over $7 billion. Revenues available to meet these needs are only $453 million of the $1.2 billion (39% of total Ex Parte 305 increase), since the remainder goes toward materials and supplies and increases in income taxes, and since not all railroads have taken the full 10% increase. Yet this amount is a step in the right direction, and plaintiffs should be obligated to do as the other railroads have already done.

At this point the Chessie Lines are free of the obligation to report or use revenues in the specified manner, and the Commission cannot be sure to what uses their Ex Parte 305 revenues are being put. If, on the one

hand, they are in substantial *de facto* compliance with the Commission's orders by expending their revenues in the specified manner, the temporary restraining order is unnecessary. If, on the other hand, they are not applying their funds to deferred maintenance and delayed capital improvements, there is no justification for their further failure to do so. In either case the Chessie Lines should be forthwith required to report as every other railroad has done, and to expend their revenues as every other railroad has done. If they still insist that they are without deferred maintenance and delayed capital improvements, they should be obligated by the removal of this temporary restraining order to apply to the Commission at once for authority to apply these funds to new and additional capital improvements.

One other recent development merits attention. On November 15, 1974, the nation's railroads (except plaintiffs) applied for still another general increase of 7%, to become effective at the beginning of 1975. The Commission has not yet taken any action with respect to this new request, either as to the level requested or the matter of conditions. The Chessie Lines have so far declined to participate in this request. This may be due either to disagreement over the level sought or the possibility of conditions being attached to the new increase—defendants cannot be sure at this point. But to the extent that Chessie's continued avoidance of conditions may cloud the more germane issues of the level of and need for the new increase sought, the dissolution of the temporary restraining order would have the salutary effect of forcing plaintiffs to decide whether or not they wish to participate in the proposed new increase solely on the basis of the amount of the increase sought. As matters presently stand, plaintiffs' obvious hope to avoid conditions confuses the real issue in the pending increase.

CONCLUSION

For all the above reasons, the temporary restraining order issued on August 18, 1974, should be dissolved forthwith.

Respectfully submitted,

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[Exhibits omitted]

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,

and

WESTERN MARYLAND RAILWAY, PLAINTIFFS

v.

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION, DEFENDANTS

AFFIDAVIT OF EDWARD P. JOHNSON

DISTRICT OF COLUMBIA
S.S.

Edward P. Johnson, being duly sworn according to law, deposes and says:

I am employed by the Federal Government, Interstate Commerce Commission, Bureau of Accounts, as an auditor in the Section of Audit. I received a Bachelor of Commercial Science degree from Benjamin Franklin University, Washington, D. C. My background has been principally in accounting and depreciation. I was em-

ployed in the accounting department of the Southern Railway Company for twenty-two years, between 1942 and 1964, with the exception of military service, January 1943 to April 1946. The majority of my time was spent in the area of property investment accounting concerning the assets which comprise the physical plant and equipment of the railroad. I held various accounting positions between 1946 and 1959, including valuation accountant, special traveling accountant, and Assistant to the Auditor of Capital Expenditures. I was Assistant Manager, Capital Expenditures, from January 1960 to June 1964. In June 1964 I entered the employ of the Interstate Commerce Commission, Bureau of Accounts, as a Staff Accountant. From July 1965 to August 1968, I was Chief, Depreciation Branch. From August 1968 to October 1970 I was Chief of Field Reports Review Branch. From October 1970 to March 3, 1973 I was Chief, Section of Valuation and Depreciation. From March 4, 1973 to the present time my position has been Auditor, Section of Audit.

The railroads comprising the Chessie System, The Chesapeake and Ohio Railway Company (C&O), The Baltimore and Ohio Railroad Company (B&O), and Western Maryland Railway Company (WM) contend that there is no deferred maintenance (as that term is defined in Ex Parte No. 305) existing on their lines. This contention is not supported by historical data reported to the Commission by these carriers.

The data used in this affidavit were taken from the Annual Report Form A's filed with the Interstate Commerce Commission by the railroads making up the Chessie System, unless otherwise noted.

An analysis of this data was made and the results compared with an established norm for the railroad industry as a whole. It consists primarily of a study of Chessie System's maintenance practices concerning the track structure, and in particular, tie and rail renewal programs. On-site inspection of the Chessie System facilities to determine a more precise measurement of deterioration was not made.

It is an accepted fact that all physical plant assets are subject to deterioration through normal wear and tear over their life expectancy until they are ultimately retired. However, some assets are retired early due to obsolescence or casualty, or a change in operations renders them less useful.

In the railroad industry one of the major reasons for tie and rail replacement is wear and tear. Service life of cross ties is dependent on such factors as type of wood, treating process, preservative used, climatic conditions, tonnage and incidence of traffic over the rails supported by the ties.

Numerous studies have been prepared over the years by engineering and consulting firms establishing certain norms for service life of railroad properties. The service life used in this analysis for cross ties is 35 years. This life was taken from the ASTRO Report [1] which was prepared in 1970 for the Association of American Railroads to show the then current condition of the industry. It was an in-depth study of many aspects of the railroads and developed, among other things, an estimate of deferred maintenance which was substantial. Concerning the life of cross ties the following statement was reported (page 65): "With minor variations due to climatic conditions and terrain, the responses of the survey of railroad officials suggested a 35-year life for new cross ties."

Naturally, it is recognized that the maximum and minimum life of a cross tie can vary depending on the track maintenance programs and practices of the particular railroad involved.

It is interesting to note, however, that in its Ex Parte 305 report to the Commission one eastern railroad used this 35-year life in developing the amount of deferred maintenance.

A. DEFERRED MAINTENANCE—CROSS TIES

The cost of a cross tie varies in different sections of the country and today some railroads are paying from

[1] "The American Railroad Industry: Prospectus," a report of America's Sound Transportation Review Organization, June 30, 1970, compiled for the Association of American Railroads.

$10 to $17 per tie. Installation costs also vary depending on the method used to install. Some railroads use automated track machinery and others less advanced methods. The cost used here for an installed tie is a conservative one of $16, consisting of $12 for the tie and $4 for labor.

Using a 35-year life for creosoted cross ties and relating this to the renewal practices of the Chessie System, a substantial amount of deferred maintenance is determined. This life represents an annual renewal rate of 2.86% which is arrived at by dividing the 35-year service life of the tie into 100%.

The Chessie System's average tie replacement rate for the past ten years, 1964-1973, is 1.70%, indicating a service life of 59 years. This figure was determined by averaging figures reported in the Chessie System Lines' Railroad Annual Report Form A's for the period involved. This life is not realistic and to my knowledge has never been achieved by any class I railroad.

One might surmise that the rate of 1.70% attained by Chessie System in recent years is low because Chessie had been replacing its ties at a more rapid rate in prior years. This is not true. As a matter of fact, the Chessie System's composite renewal rate for the past twenty years, 1954-1973, determined in the same manner, is 1.69%, slightly less than it was for the past ten years, 1.70%.

The Chessie System on December 31, 1973, had 53.9 million cross ties in place, which is slightly less than the average number of ties in place over the past ten years.

Applying the rate of 2.86%, based on a 35-year life for cross ties, to the existing ties in place, produces 1.5 million ties to be replaced on an annual basis, or 15 million ties for the limited period of the past ten years. The actual replacements made by the Chessie System during this period totalled 9.2 million, leaving a deficiency of 5.8 million ties and deferred maintenance amounting to $92.8 million.

If we ignore the standard of the 35-year life, developed by the ASTRO Report, and use a more conservative one of 40 years, then the annual rate would be

2.50%. Applying this rate, as previously done for the 35-year life, would produce a deficiency of 3.8 million ties and deferred maintenance amounting to $60.8 million.

As a comparison to the Chessie System, I have made a similar study of cross tie replacements for the Southern Railway System and the Norfolk and Western Railway Company, both highly profitable roads which reported deferred maintenance on their Ex Parte 305 reports filed with the Commission. The Southern was chosen because it is considered one of the best maintained roads in the country among railroad managements, engineers and financial analysts. The Norfolk and Western was chosen because its operating territory is similar to Chessie's and is similarly heavily dependent on coal traffic.

In its form 305-A-6 filed with the Commission, Southern Railway Systems shows deferred maintenance of about 1.7 million cross ties despite the fact that its tie renewal program over the past ten years has been extremely heavy. Southern System has 40.2 million ties in place of which 14.1 million have been replaced in the past ten years. The average of 1.4 million ties replaced each year represents a period replacement rate of nearly 3.6%, suggesting a 29-year life. Admittedly Southern's heavy tie replacement program in recent years resulted from the need to catch up for the prior ten year period, 1954-1963, when the tie renewal rate was 2.09. Nevertheless, Southern's replacement rate of 2.09 during the 1954-1963 period was higher than the Chessie's tie replacement rate of 1.69% during that same period.

Norfolk and Western shows deferred maintenance of nearly 1.9 million cross ties in its form 305-A-6 filed with the Commission. N&W's replacement rate over the 1964-1973 period averages about 1.64% a year, slightly lower than the Chessie System's 1.70%. This is a wholly inadequate replacement rate also but, the important thing is that the Norfolk and Western concedes the fact it has deferred maintenance.

B. DEFERRED MAINTENANCE—RAIL

Adequacy of rail replacement is very difficult to determine without a breakdown of a railroad's traffic density for each segment of its roadway, as the life of rail is largely determined by the gross tonnage moved over it. The Norfolk and Western, in calculating deferred maintenance in connection with Ex Parte 305, estimated that the life of rail is 550 million gross ton miles per mile of track. While the average number of miles operated and the average number of tons carried one mile per mile of track is known for each railroad we do not know how that tonnage is distributed. Nevertheless, we do have some idea, based on historical data, what the average life for rail measured in years is, for the railroad industry.

The ASTRO Report contained a section dealing with the life of rail. It stated (p. 14): "According to current estimates, new rail can reasonably be expected to last an average of 60 years, including subsequent reuse in secondary lines." The basis for this life is also quoted (p. 65): "The Standard of 60 years for the total life of new rail (132-140 pounds per yard) was developed from a survey of members of the General Committee, Operating-Transportation Division, AAR, taken in February 1970."

Interestingly the Reading Company in reporting deferred maintenance to the Commission, on form 305-A-6, used a 50-year life for rail.

In order to give the railroads which comprise the Chessie System the benefit of the doubt, I used a 60-year life in calculating deferred maintenance on rail.

It is recognized that the 60-year life is an average for the railroads and includes tracks which will have less tonnage hauled over them than others thereby extending the service life beyond 60 years for those tracks. On the other hand, the density on the main lines and major branch lines may be so great as to cause segments of these lines to be replaced after a relatively short period of time. It is not unusual for large Class I railroads to replace extensive trackage of the main line in twenty

years or less. One railroad reported a 20 year life for its main line tracks.

The Chesapeake & Ohio operates its trains over 10,000 miles of track. Included in this mileage is 1,380 miles of track used by C&O under trackage rights. These tracks are maintained by others. For replacement purposes the 1,380 miles of track have been excluded from C&O's mileage leaving a total of 8,620 miles.

Using a 60-year life this would mean that nearly 144 miles of new rail would have to be replaced each year. C&O has averaged about 70 miles of new rail replacement per year over the last ten years, for a total deficiency of 740 miles during this period. It costs about $60,000 a mile to put new rail in place. A 740-mile deficiency represents $44.4 million in deferred maintenance.

The B&O operates its trains over 10,200 miles of track. Included in this mileage is slightly over 500 miles of track used by B&O under trackage rights. These tracks are maintained by others. For replacement purposes the 500 miles of track have been excluded from B&O's mileage leaving a total of 9,700 miles.

Again, using the 60-year life indicates the need to replace about 162 miles of new rail per year. The average replacement rate over the past ten years was 102 miles, creating a deficiency of 600 miles. At a cost of $60,000 per mile in place this amounts to over $36 million in deferred maintenance.

It should also be pointed out that over the past ten years the Chessie System has had one of the highest traffic densities in the industry. The higher the traffic density the lower the anticipated rail life should be.

An analysis of the annual report, Form R-1, data furnished by the railroads for year 1973 and compiled by the Commission reveals that the Chessie System accounted for 23% of the gross ton-miles of freight moved over the tracks by all the Class I railroads in the Eastern District of the United States. It was exceeded only by Penn Central, the giant of the industry.

The Chessie System's percentage of total freight gross ton-miles moving over the tracks for all Class I railroads in the United States was 6.41.

By comparison Southern Railway System operates its trains over about 15,800 miles of track. For replacement purposes I have excluded 1,600 miles covered by trackage rights leaving a total of 14,200 miles. Based on a 60-year life the annual replacement mileage would be 237 miles. Over the past ten years the actual replacement rate has averaged 196 miles a year for a total deficiency of 410 miles. However, Southern does not claim that it does not have deferred maintenance. Interestingly enough, Southern in its form 305-A-6 claims it has deferred maintenance of 106,142 rail tons. Using 130 pound rail this works out to 464 miles of deferred maintenance. The average weight of Southern's replacement rail has been about 130 pounds over the past ten years.

In addition, Southern's rail renewal program has been substantial over the past five years, averaging close to 300 miles per year, indicating a program to overcome past deficiencies. It should also be noted that Southern's traffic density has averaged much lower than Chessie's over the past ten years, an important factor in determining rail life.

The Norfolk and Western operates its trains over nearly 15,000 miles of track. Included in this figure are 1,700 miles of track operated under trackage rights. For replacement purposes this mileage has been excluded leaving a total of 13,300 miles. Based on a 60-year life 222 miles of track should have been replaced annually, or for the past ten years 2,220 miles. In actuality, only 987 miles of track were replaced with new rail for a deficiency of over 1,233 miles. However, N&W admits to having deferred maintenance.

In its Form 305-A-6 the Norfolk and Western shows deferred maintenance of 152,301 tons of rail. At an average of 130 pound rail it represents deferred maintenance of 666 miles of track. Based on these determinations N&W's deferred maintenance is understated.

C. DERAILMENTS ATTRIBUTABLE TO DEFECTS IN OR IMPROPER MAINTENANCE OF TRACK AND ROADBED

The Accident Reports Act (45 U.S.C. Sections 38, *et seq.*) requires railroads to report monthly accidents and the causes to the Department of Transportation, Federal Railroad Administration. Included in these reports are train derailments.

One of the best indicators as to whether a railroad is maintaining its facilities to meet acceptable maintenance standards is the incidence of accidents attributable to faulty conditions of the track structure. If the number of accidents is increasing consistently and the number of cars moving over the line remains fairly constant it is logical to conclude there is a breakdown in maintenance.

In support of this view, Penn Central has the largest number of derailments in the industry by far, and has reported to the Commission that deferred maintenance attributable to the track structure amounts to $617.6 million, an alarming figure.

The Accident Bulletin of the Department of Transportation [2] reveals that since 1964, when there were 87 derailments on the Chessie System Line due to defects or failures in the roadway facilities, through 1973, when there were 240, derailments on the Chessie System have risen 176 percent.

Derailments can have an adverse effect on railroad operations by causing traffic to be tied up until the tracks are cleared and again made operable. In some cases the derailments may result in the complete loss of the product being transported due to irreparable damage. The existence of these conditions certainly would have an adverse effect on rendering proper service to the shipper.

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[2] Accident Bulletin, Summary and Analysis of Accidents on Railroads in the United States, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety.

It is my opinion that these types of situations are covered by the Commission's definition of deferred maintenance wherein the service to the shipper is rendered partially or wholly inadequate.

D. DEFERRED MAINTENANCE—EQUIPMENT

One of the most widely used indicators in measuring deferred maintenance of freight train cars is the bad order ratio. This ratio is developed by relating the unserviceable cars in need of repairs to the total number of freight carrying cars on line. For the past decade an average of about 5% was attained by the railroad industry as a whole according to reports published by the Commission.[3]

A comparison was made of the Chessie System bad order ratio to that of the United States as a whole for the twelve months ended December 31, 1973. It reveals that Chessie's ratio is 5.45% and the United States is 5.60%. Using these data as the sole criterion Chessie System's performance is satisfactory. It should be noted however, that the majority of Class I railroads reported to the Commission under Form 305-A-6, that they had deferred maintenance of equipment. The estimated amount of these deferrals aggregated $300 million.

My analysis shows that based on established norms for rail and tie renewal replacement cycles the Chessie System has deferred maintenance. It also shows that derailments attributable to track defects in or improper maintenance of track and roadbed have increased appreciably.

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[3] Financial and Operating Statistics, Statement No. 100. From 1964 through 1970, Statement No. Q-240 (OS-C).

If called upon to do so, I would testify to the foregoing substantially as set forth in this affidavit.

EDWARD P. JOHNSON

Sworn to and subscribed
before me this day
of November, 1974.

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, ET AL, DEFENDANTS

MEMORANDUM IN OPPOSITION TO MOTION TO DISSOLVE THE RESTRAINING ORDER

PRELIMINARY STATEMENT *

The Motion to Dissolve the restraining order and the accompanying memorandum and affidavit manifest yet another vain effort by the Commission to divert attention from its untenable position with respect to the illegal conditions. The effort plainly fails as it is wholly without basis in law or fact. Indeed, the Commission's factual contentions are irrelevant and inaccurate as to Chessie System lines and its legal position is contradicted by the sole decision on which it relies. Injunctive relief against the illegal conditions was and is proper.

But before demonstrating this, one important point must be made. Whether or not Chessie System lines have any "deferred maintenance" or "delayed capital improvements" is irrelevant to, and has no effect upon, the central issue before this Court, namely the Commission's lack of statutory power to promulgate and enforce the challenged conditions. Thus, the unprecedented, illegal conditions would not be saved even if, as is not the case, Chessie System lines had "deferred maintenance" or "delayed capital improvements." Not surprisingly, the Commission's argument obscures this point, as it is devoted chiefly to ill-founded efforts to avoid judicial review.

* The plaintiffs will be referred to as the Chessie System lines. The defendants will be referred to collectively as the Commission.

ARGUMENT

THE DISTRICT COURT'S RESTRAINING ORDER WAS PROPERLY GRANTED AND SHOULD REMAIN IN EFFECT UNTIL THIS COURT GRANTS PERMANENT RELIEF

1. *Injunctive Relief is Appropriate Here*

Wide of the mark are the Commission's contentions that (a) Chessie has raised no substantial issues in this case and has no "probable right"; (b) there is no injury to Chessie; and (c) the public interest requires dissolution of the restraining order.

(a) *Chessie System Lines Have a "Probable Right"*

West Virginia Highlands Conservancy v. *Island Creek Coal Co.*, 441 F.2d 232 (4th Cir. 1971) is the sole decision cited by the Commission on this point. There, in portions of the opinion not quoted by the Commission, the Fourth Circuit made clear that an applicant for preliminary injunctive relief need not "demonstrate an absolute right to the relief it seeks." Instead, a "probable right" is established if the court is satisfied that "substantial isues" are raised, the resolution of which is "not immediately apparent" and that the applicant has not embarked on frivolous litigation.

Chessie System lines more than meets this standard. Indeed, they have demonstrated above and in their opening brief that they have a far greater chance of ultimate success than the Commission. Thus, as Chessie System lines have demonstrated, the Commission's efforts to control the manner in which railroads spend their revenues is without precedent, without statutory basis, without judicial authority, and fraught with serious consequences. The only leigslation by which the Commission was ever given authority over revenues was the ill-fated Recapture Clause, a power decisively repealed in 1933. Since that time, the courts, and the Commission itself, have consistently recognized that the Commission has no authority to require or limit in any way the

disposition of railroad revenues. This point is underscored by the Commission's pending request to Congress for the very power it seeks to assert here without Congressional or statutory approval. By any standard, therefore, it is Chessie System lines, not the Commission, which have demonstrated a high probability of ultimate success. To argue that Chessie System lines have not established a "probable right" is to ignore that the illegal conditions are an attempt to exercise a revolutionary power not granted by Congress, denied by the courts and repeatedly disclaimed by the Commission.

(b) *Enforcement of the Illegal Conditions Would Result in Serious Irreparable Injury to Chessie System Lines*

The affidavit of Mr. J. T. Ford, Senior Vice President of Chessie System lines, a copy of which is attached hereto as Exhibit A, establishes that despite the October 3 order, the illegal conditions prevent Chessie System lines from using the *Ex Parte No. 305* revenues. Chessie System lines have no "deferred maintenance" or "delayed capital improvements" as defined by the challenged orders. Their three hundred million dollar capital expansion program is not a "new and additional capital improvement" as defined in the October 3, 1974 order. Thus, enforcement of the illegal conditions would require Chessie System lines to collect from shippers revenues they cannot spend. The result is that Chessie System lines will be seriously disadvantaged vis-a-vis its competitors and shippers will not get their money's worth.

Significantly, in an apparent invitation to flaunt the challenged conditions, the Commission on page 8 of its Brief on the merits states unequivocally that the definitions of "deferred maintenance" and "delayed capital improvements" leaves to carrier management the determination of the extent to which those conditions exist with respect to their own properties." Then, in direct contradiction of this statement, the Commission devotes the major portions of its argument to an attempt to cast

doubt on statements by Chessie System lines that it has no "deferred maintenance" or "delayed capital expenditures," nor, indeed, any "new and additional capital improvements." This contradiction underscores the lengths to which the Commission will go to secure acquiescence to its unlawful plan. The fact is the Commission's position in this case makes unmistakably clear that its real intention is to control the ways in which railroads spend their revenues.

Apart from contradicting itself, the Commission has wholly failed to counter the sworn statements of the management of the Chessie System lines. Thus, the sole basis for the Commission position is the affidavit of its own auditor, Edward P. Johnson. The affidavit is inaccurate and incomplete in several respects. Mr. Johnson failed to consider the appropriate statistical period. His conclusions were based on statistical standards of his own making. Though admitting that the average life of a railroad tie is 35 years, he erroneously took into account only 20 years of Chessie System lines tie replacement program. Had Mr. Johnson reviewed the tie replacement program for the appropriate statistical period (from 1939 to the present), he would have found that Chessie System lines have no deferred maintenance. In 1939, Chessie System lines had in place approximately 50 million ties. In the 35-year period since then, Chessie System lines have installed at least 52 million ties, a number more than sufficient to meet any maintenance program.

Mr. Johnson's conclusions with respect to rails are equally erroneous. For example, Johnson wholly failed to take into account Chessie System lines' substantial installation of modern welded rail, a fact which invalidates his analysis. Importantly, all of the facts above are supported by the affidavit of J. W. Brent, Chief Engineer for Chessie System lines, a copy of which is attached hereto as Exhibit B. That affidavit establishes that Chessie System lines have not neglected their rail or tie replacement program. Unlike Mr. Johnson, Mr. Brent is a qualified engineer with first-hand knowledge of the actual facts pertaining to Chessie System lines.

In sum, if the illegal conditions are enforced, Chessie's irreparable economic injury will mount daily. Under these circumstances, interlocutory injunctive relief is unquestionably appropriate. This conclusion is confirmed by the marked absence of any demonstrable injury to the Commission, if the illegal conditions are enjoined. The significance of this factor was recognized by the Fourth Circuit in the *West Virginia Highlands Conservancy* case where it noted that:

> "Interlocutory relief is not improper if . . . [Petitioner] can also show a need for protection which outweighs any probable injury to . . . [Respondent]. 441 F.2d at 235.

Interlocutory injunctive relief is all the more appropriate where, as here, there is a threat of actual and substantial injury to Chessie System lines and no corresponding injury to the Commission.

(c) *Interlocutory Injunctive Relief Is in the Public Interest*

Without the protection granted by the District Court, as the J. T. Ford affidavit points out, the illegal conditions would have prevented Chessie System lines from using the approximately $53 million in additional revenues derived from *Ex Parte No. 305*. The illegal conditions would have restricted Chessie System lines' expenditures for increased costs of materials and supplies to a maximum of 3 percentage points of the total ten percent rate authorization. However these costs actually amounted to $25 million—a figure well in excess of the allowable percentage. The remainder of the $53 million, after taxes, was expended on normal maintenance. Affidavit of J. T. Ford, Exhibit A, p. 2.

If it had not been for the District Court's restraining order, the funds from *Ex Parte No. 305* would have been frozen and unavailable for application to Chessie System lines' increased costs and maintenance expenses. Nor would it have been available to defray the increased taxes described in the supplemental affidavit of James T. Lyon, a copy of which is attached hereto as Exhibit C.

Therefore the public interest is aligned with the position taken here by Chessie System lines. The rate payers *are* the public and would have received nothing for their increased bills had the Commission's conditions remained in effect. Nor would they have received service improvements commensurate with the higher rates.

2. *The Material Circumstances Have Not Changed*

The Commission contends that dissolution of the restraining order is required by "material changes in the circumstances of the case [that] have taken place since the temporary restraining order was originally entered. . . ." Despite repeated references to such "changes in circumstances," the Commission never identifies any relevant changed circumstances. This is no accident; there are none. The facts pertinent to the propriety of injunctice relief are the same today as they were the day the District Court entered the restraining order.

The only two post-August events referred to anywhere by the Commission are the October 3 order and Chessie's present absence from the new general revenue increase. Both are entirely irrelevant to the merits of continuing the injunctive relief. As noted above and in Chessie's opening brief, the October 3 order aggravates rather than remedies the situation. Under this order carriers unable to use the increased revenues for "deferred maintenance" or "delayed capital improvements" may apply to the Commission for permission to use the revenues for "new and additional" capital improvements, defined narrowly by the Commission to exclude projects "presently undertaken, scheduled or otherwise committed." This is of no benefit to Chessie, since their $300 million capital program was already "scheduled or committed." The October 3 order, in short, changes nothing; it is simply another condition or device by which the Commission seeks unlawfully to displace railroad management and control railroad revenue expenditures.

The irrelevance of Chessie's refusal to participate in the new rate increase request is underscored by the Commission's apparent purpose in mentioning it. The

Commission suggests that this Court should dissolve the restraining order for the purpose of coercing Chessie System lines to join in the new rate increase request and to accept whatever other illegal conditions on revenue expenditures the Commission may choose to impose.

> [T]o the extent that Chessie's continued avoidance of conditions may cloud the more germane issue of the level of and need for the new increase sought, the dissolution of the temporary restraining order would have the salutary effect of *forcing* plaintiffs to decide whether or not they wish to participate in the proposed new increase solely on the basis of the amount of the increase sought. Memorandum In Support of Motion to Dissolve, p. 9 (emphasis added).

In other words, the Commission simply wants Chessie System lines to knuckle under. This is hardly a valid reason for dissolving the restraining order.

CONCLUSION

The truth of the matter is circumstances have not changed; the facts and circumstances now before this Court on the question whether injunctive relief should be continued are the same which led the District Court to grant the restraining order. Injunctive relief was proper then; it is proper now.

Respectfully submitted,

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
THE BALTIMORE AND OHIO RAILROAD COMPANY
WESTERN MARYLAND RAILWAY COMPANY

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Counsel

CERTIFICATE

I certify that on the 10th day of December, 1974, I mailed a copy of the foregoing Memorandum In Opposition To Motion To Dissolve The Restraining Order to Thomas E. Kauper, Esq., Assistant Attorney General, Department of Justice, Washington, D. C. 20530, John H. D. Wigger, Esq., Department of Justice, Washington, D. C. 20530, David Hopkins, Esq., United States Attorney, Richmond, Virginia 23210 and David G. Lowe, Esq., Assistant United States Attorney, Richmond, Virginia 23210, counsel for United States of America; and Fritz R. Kahn, Esq., General Counsel, Interstate Commerce Commission, Washington, D. C. 20423 and Hanford O'Hara, Esq., Interstate Commerce Commission, Washington, D. C. 20423, counsel for Interstate Commerce Commission.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL,
PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, ET AL, DEFENDANTS

AFFIDAVIT OF J. T. FORD

STATE OF OHIO)
) To-wit:
COUNTY OF CUYAHOGA)

J. T. Ford, being first duly sworn, hereby deposes and says that:

(1) I am Senior Vice President for each of the plaintiff railroad companies. I have submitted previously an affidavit in this proceeding on August 17, 1974. I have the following additional facts to bring forward:

(a) By the end of November 1, 1974, and since the effective date of the Ex Parte No. 305 increase (June 20, 1974), the plaintiffs have derived approximately $53 million in increased revenues from that increase.

(b) During that same period of time, the plaintiffs' increased costs of materials and supplies have amounted to $25 million. This figure is well in excess of the three percentage points allowed. This leaves $28 million remaining, before taxes.

(c) On an annualized basis, increased income and other taxes attributable to the Ex Parte No. 305 increase have been $18 million during said period. This leaves $10 million remaining after all such taxes.

(d) Since the effective date of the increase, the expenditures have not only exceeded the above $10 million,

but they have increased by more than $11 million over the corresponding period in 1973.

(e) Had it not been for the temporary restraining order entered by this court (August 18, 1974), the Ex Parte No. 305 conditions would have prevented plaintiffs' use of the increased revenues for the purposes described in (c) and (d) above, also for that portion of (b) above which was in excess of the three percentage points. The money was not spent for "deferred maintenance" and "delayed capital improvements" as defined by the Commission's order.

(f) Plaintiffs have initiated a capital improvement program of the magnitude of $300 million, all of which was "undertaken, scheduled or otherwise committed" prior to October 3, 1974. Were it not for this court's temporary restraining order, none of the Ex Parte No. 305 revenues could be applied toward this program, in that none of the improvements were "delayed" according to the Commission's definition.

(g) Further, plaintiffs do not now have scheduled any additional significant capital improvements as defined in the October 3, 1974 order for which the Ex Parte No. 305 revenues may be applied.

(2) Therefore, all of the restrictions described in my August 16, 1974 affidavit remain in effect today.

/s/ J. T. Ford
J. T. FORD

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid this 6th day of December, 1974.

My commission expires 9-22-77.

Notary Public

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, ET AL, DEFENDANTS

AFFIDAVIT OF J. W. BRENT

STATE OF WEST VIRGINIA)
)
COUNTY OF CABELL) To-wit:
)
CITY OF HUNTINGTON)

J. W. Brent, being first duly sworn, hereby deposes and says that:

(1) I am Chief Engineer (Operations and Maintenance) for each of the plaintiff railroad companies. I have held other positions in the engineering department of one or more of plaintiff lines since 1949. In my present capacity, I am responsible for the maintenance of the plaintiffs' lines of railroad.

(2) I have reviewed the affidavit submitted by Edward P. Johnson, an auditor from the Interstate Commerce Commission's Bureau of Accounts, respecting plaintiffs' maintenance program and I have the following comments thereon:

(a) The Johnson study of rail and tie applications does not contain enough history for use as a statistical basis in establishing deferred maintenance. Since he indicates that ties have a life average of 35 years, he should have studied installation of ties on plaintiffs' lines for a 35-year period rather than just 20 years.

During and after World War II, both C&O and B&O installed much more material each year than would be needed on an average life basis. This was necessary after the depression to place the railroads in condition to handle the increased traffic. One cannot exclude this material, that is still performing first life service, from any statistical study of adequacy of rail and tie applications. Also, Mr. Johnson tied his study to the mileage of rail and population of cross ties on December 31, 1973, but completely disregarded the quantities of rail and cross ties applied to construction projects that are part of the plant.

(b) I am in agreement with Mr. Johnson's estimate of an average of from 35 to 40 years for the life of cross ties. During the 35-year period from 1939 through 1973 the C&O and B&O installed 52,342,109 cross ties in maintenance and construction, whereas the estimated number of cross ties in all maintained tracks is just 50,661,540. Therefore, demonstrably, C&O/B&O have more than fulfilled their maintenance responsibility.

(c) I am not in agreement with using industry averages for rail life. Mr. Johnson estimates an average rail requirement for C&O/B&O of 306 miles based on the 60 year life industry average. According to my research, the average annual requirement has been 287 miles of new rail. After the current abandonment program, the average requirement will be about 266 miles per year. C&O and B&O installed 10,014 miles of new rail in maintenance during the 35-year period from 1939 through 1973 for an average of 286 miles per year. Additional rail was installed in construction. On December 31, 1973, 70% of the key service route mileage had rail not exceeding 20 years old. Of the secondary service routes and profitable branch lines, the percentages were 50 and 41, respectively. After the retirement of unneeded second main tracks, the percentages will increase as the track with the older rail is being removed.

(d) To date, 4,766 miles of rail has been welded on C&O and B&O, a figure second in the industry. Although welded rail has been installed for less than fifteen years, over half of our service route mileage is in

welded rail and over a third of our profitable branch lines. In 1974, 432 miles of welded rail is being laid out of face, of which 248 is in key and secondary service routes. An additional 30 miles of welded rail is being laid in small patch lots.

3. I can attest that plaintiffs have no deferred maintenance nor delayed capital improvements within the meaning of the Commission's Ex Parte No. 305 definition. Our system has not suffered competitively nor has service to our shippers been impaired because of any defect in our maintenance and expenditures.

J. W. BRENT

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid, this —— day of December, 1974.

My Commission expires ————————————.

Notary Public

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, ET AL, DEFENDANTS

AFFIDAVIT OF JAMES T. LYON

STATE OF OHIO)
) To-wit:
COUNTY OF CUYAHOGA)

James T. Lyon, being first duly sworn, hereby deposes and says that:

I am Assistant Vice President—Taxes for each of the plaintiff railroad companies, hereinafter referred to collectively as the "Chessie System lines." I have previously submitted an affidavit in this proceeding. I wish to correct paragraph 7 of my original affidavit in the light of further study to read as follows:

"While the amount of increase in property taxes cannot be calculated precisely (because of rate variations over the five-year future period involved, differences in the various state assessment formulas, and the like), its magnitude can be closely estimated on the basis of informed judgment. A ten percent increase in revenues should result in an increase of $3,500,000 to $4,000,000 a year in property taxes at the end of five years, or at least $300,000 a month. Of this, 20 percent (or $60,000 a month and $700,000 to $800,000 a year) will be pay-

able for the first year in which the increased revenues are obtained, and an additional 20 percent will be added for each of the next five years."

JAMES T. LYON

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid this —— day of December, 1974.
My Commission expires ——————————.

Notary Public

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL,
PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, ET AL, DEFENDANTS

SUPPLEMENTAL AFFIDAVIT OF J. T. FORD

STATE OF OHIO)
) To-wit:
COUNTY OF CUYAHOGA)

J. T. Ford, being first duly sworn, hereby deposes and says that:

(1) I am Senior Vice President for each of the plaintiff railroad companies. I have submitted affidavits in this proceeding on August 17, 1974 and December 10, 1974.

(2) In my December 10, 1974 affidavit, there is an ambiguity. In paragraph (c), I stated that "increased income and other taxes attributable to the Ex Parte No. 305 increase have been $18 million."

(3) In paragraph (e), I stated that had it not been for the temporary restraining order entered by this Court, the Ex Parte No. 305 conditions would have prevented plaintiffs' use of the increased revenues to defray these taxes. Actually, the conditions permit use of the revenues to defray income taxes. However, as attested in the Lyon affidavit, there are taxes other than income taxes of approximately $3.5 million to $4 million a year included in the total of $18 million, which, under the terms of the Commission's conditions, may *not* be defrayed by the Ex Parte No. 305 revenues. It is to

these taxes and not the entire $18 million tax figure to which I referred when I stated in paragraph (e) that the Ex Parte No. 305 revenues were unavailable for use to pay them.

/s/ J. T. Ford
J. T. FORD

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid this 11th day of December, 1974.

My commission expires ————————.

/s/ Garth E. Griffin
Notary Public
GARTH E. GRIFFIN
Attorney
State of Ohio

My Commission has no expiration date.

Section 147.03 R.C.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

C. A. No. 74-0370-R

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL,
PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, ET AL, DEFENDANTS

AFFIDAVIT OF C. C. HAWK

STATE OF OHIO)
) To-wit:
COUNTY OF CUYAHOGA)

C. C. Hawk, being first duly sworn, hereby deposes and says that:

(1) I am Assistant Vice President (Finance) of the plaintiff railroad companies. I am in charge of the budget for said companies. I have held various positions in one or more of the plaintiff lines in the Accounting and Financial Departments since 1960. My present duties, as I have stated, include the obligation of preparing the budget as well as reviewing and reporting the capital expenditures of plaintiff Chessie System lines.

(2) For the first eleven months of 1974, plaintiff Chessie System lines expended a total of $33.7 million on capital improvements.

(3) From July 1, 1974 to November 30, 1974, plaintiff Chessie System lines expended $11.4 million on capital improvements.

(4) I know personally in the discharge of my duties from daily contact with Chessie System lines' purchasing, engineering, mechanical, and all other interested personnel, that had there not been critical shortages of steel and other materials through November 30, 1974

the plaintiffs would have constructed 4,500 coal hopper cars having a value of $83 million. The only reason that this capital expenditure was not made was because of these critical material shortages.

In addition, because of the material shortages and resulting price increases, plaintiffs will have to spend approximately $107 million for this equipment when it is finally available.

/s/ C. C. Hawk
C. C. HAWK

Taken, sworn to and subscribed before me, a Notary Public in and for the jurisdiction aforesaid, in my jurisdiction aforesaid this 18th day of December, 1974.

/s/ Garth E. Griffin
Notary Public
GARTH E. GRIFFIN
Attorney
State of Ohio

My Commission has no expiration date.

Section 147.03 R.C.

[NOTARIAL SEAL]

Before The

INTERSTATE
COMMERCE COMMISSION

Exparte No. 305

[Filed Apr. 22, 1974, Interstate Commerce Commission]

PETITION OF UNITED STATES RAILROADS FOR PERMISSION TO FILE A 10 PERCENT INCREASE IN FREIGHT RATES AND CHARGES TO BE EFFECTIVE ON MAY 2, 1974

JOHN W. ADAMS, JR.
ANDREW C. ARMSTRONG
HARRY N. BABCOCK
CURTIS H. BERG
R. W. BRIDGES
JOHN J. BURCHELL
J. T. CLARK
JOHN A. DAILY
HARRY L. DE LUNG, JR.
LOUIS T. DUERINCK
R. S. M. EMRICH III
J. D. FEENEY
STUART F. GASSNER
LOUIS HARRIS
JAMES L. HOWE III
CHARLIE H. JOHNS
EDWARD A. KAIER
RICHARD W. KIENLE
GEORGE H. KLEINBERGER
RICHARD D. LALANNE
HARRY B. LATOURETTE
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BEFORE THE

INTERSTATE COMMERCE COMMISSION

PETITION OF UNITED STATES RAILROADS FOR PERMISSION TO FILE A 10 PERCENT INCREASE IN FREIGHT RATES AND CHARGES TO BE EFFECTIVE ON MAY 2, 1974

I.

PETITION

The United States railroads listed in Appendix 1 and certain water and motor carriers having joint rates with said railroads petition this Commission to institute a proceeding with respect to the revenue needs of all carriers by railroad operating in the United States; to make all carriers by railroad within the United States respondents; to authorize the filing of a master tariff and connecting link supplements and other necessary tariffs and supplements increasing present rates and charges within, from, to and via all territories by 10 percent [1] to become effective on May 2, 1974, or as soon thereafter as possible, upon not less than ten days' notice.

The Commission has discretion under the provisions of Section 6 of the Interstate Commerce Act to allow the filing of rate changes on short notice. As discussed in this petition and demonstrated in the supporting verified statements, there is an urgent railroad revenue need which requires and justifies the exercise of that discretion so that the proposed increases may be published to become effective on ten days' notice.

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[1] Several railroads have indicated an intention to announce exceptions where competitive factors require.

The Commission's tariff publishing rules (Tariff Circular 20) make no provision for and, in fact, preclude the filing of a master increase tariff to which all other tariffs may be connected in order to effect a general increase in rates or charges. Therefore, and in accordance with established practice, relief from the rules is sought in order to utilize this, the only workable method by which a general increase in rates and charges can be placed into effect simultaneously on all traffic.

Blanket relief by Commission order from provisions of Section 4 of the Act is also necessary for effecting a general increase in rates or charges. Satisfaction of the revenue needs of the railroads has been held to constitute a special case within the meaning of Section 4 which justifies the issuance of the sought relief.

Application is also made for modification of all outstanding orders of the Commission to the extent necessary to permit the publication and implementation of the aforesaid general increases. There are individual and groups of rates scattered throughout the tariffs which have been prescribed by Commission orders. A general revenue needs showing warrants relief from these outstanding orders so that a master tariff can be filed.

Finally, the carriers submit and ask that the Commission find that the increase proposal will not constitute a major Federal action significantly affecting the quality of the human environment. It is submitted that, in fact, it will have certain beneficial effects upon the quality of the human environment.

Petitioners are mindful of the requirement of the Commission's Special Permission Order No. 74-1825, of December 13, 1973, that a general rate increase tariff filed subsequent to the effective date of a "fuel increase" surcharge requires cancellation of the publications containing the surcharge. That same Special Permission Order permits the full increase to be incorporated in the subsequent general increase tariff. It should be clearly understood that the 10 percent increase requested herein is to be in addition both to existing rate increases and to the fuel surcharge provided in Tariff X-301 Series. Accordingly the master tariff filed upon

receipt of the special permission sought herein will contain increase tables which will reflect not only a 10 percent increase but in addition the fuel surcharge converted to an equivalent rate increase. The Tariff X-301 Series fuel surcharge will be cancelled on the effective date of this master tariff. Petitioners hereby request permission to cancel the X-301 surcharge tariff on short notice simultaneously with application of the 10 percent increase.

The master tariff filed pursuant to the authority sought herein will contain a refund rule in the customary language. That rule will provide in part that in the event any increase resulting from the application of the master tariff exceed the increases subsequently approved or prescribed herein by the ICC, the carriers will refund the difference between the increases resulting from application of this tariff and any increases which may subsequently herein be approved or prescribed by the ICC. In accordance with these terms, if the ICC should approve the increases for application during a specified period, no refund would be called for. If, on the other hand, no increase or a lesser increase is subsequently approved and no finding as to approval of the application of the increase during a specified period is made, refunds would be in order.

II.

THE SUGGESTED PROCEDURE PROVIDES A FAIR ACCOMMODATION OF THE INTERESTS OF SHIPPERS AND THE RAILROADS' REVENUE NEEDS, ALL IN THE PUBLIC INTEREST

The essence of the relief sought by this Petition is that the railroads be permitted to file a general increase tariff on short notice. The Commission is not requested to make a determination of the lawfulness of the proposed increased rates and charges and need not do so before permitting the filing of the master tariff.

Through appropriate rate committees the railroads agreed to petition for this increase. That decision was

made on April 3, 1974. It was promptly given wide publicity in newspapers and trade publications.[1] In addition to that notice, shippers have been given notice of this Petition by mailing of copies of the Petition and supporting verified statements to all parties of record in Ex Parte 303. Thus, the shippers will have had ample opportunity to prepare and express their views to the Commission prior to the sought effective date of May 2, 1974.

Accompanying this Petition in verified statement form is the railroads' full case in support of the increase. The railroads respectfully submit that that evidence, which is discussed later, demonstrates the urgent need for prompt application of the increase. The Commission is respectfully requested to review that evidence, between the date of this filing and the effective date of the tariff, as that evidence contains irrefutable proof that the increase should not be suspended.

In this Petition the Commission is requested to institute an investigation with respect to the revenue needs of all railroads. The order which the railroads seek (Appendix 2) would institute an investigation into the lawfulness of the increased rates and charges and would require that a refund provision be incorporated into the tariff.

By permitting the increase to become effective pending investigation the urgent requests of the railroads can be met. In the investigation the Commission can give plenary consideration to all aspects of the increase that may be placed before it by the shipping public. By operation of the refund provision shippers are protected by a simple procedure for refund of the increase on any rates and charges which in the investigation the Commission may find were increased too much.

The procedure which does not require a final decision of the lawfulness of the increase until after investiga-

[1] For example, *Wall Street Journal*, April 4, 1974; *New York Times*, April 4, 1974; *Philadelphia Inquirer*, April 4, 1974; *Chicago Tribune*, April 4, 1974; *Weekly Traffic World*, April 8, 1974 and April 18, 1974.

tion provides a practical and fair means by which the Commission can accommodate the important public, shipper and railroad revenue needs involved. It should be followed.

III.

THE RAILROADS ARE IN URGENT NEED OF ADDITIONAL REVENUE

Two major factors have combined to create an urgent need for additional revenue by the railroads. Current experience and dependable projections establish a substantial increase in the Nation's reliance upon rail freight transportation, presently and in the foreseeable future. The resources now available to enable the railroads to meet this demand with adequate and efficient service are grossly insufficient. The consequences of this situation are already manifesting themselves and are certain to become more severe if relief is delayed or denied. On the one hand, rail tonnage and gross freight revenue are at the highest levels in history; national revenue ton-miles increased in 1973 by 10 percent over any year in the past. On the other hand, net earnings and rate of return are favorable only in comparison with the deeply depressed levels of other recent years and are significantly lower than the levels of 20 years ago. Thus, at a time when the railroads' physical plant is experiencing the strain of intense utilization which promises to increase, the industry's financial condition remains weak and critically disabled from making the expenditures necessary to maintain or expand service capabilities. There is a massive gap between the capital investment which the carriers should be making and their ability to accomplish such spending at current revenue levels. In the absence of improved earnings the railroad industry cannot regenerate its capacity and is, in effect, in the process of liquidating its assets.

This situation is not remote speculation; it is a fundmental economic phenomenon, the proof of which is most obvious in the consumption of assets which occurs to railroads being operated in bankruptcy; this con-

dition is so advanced that some major carriers are in immediate danger of ceasing operations because of lack of cash. But the process is in progress just as surely on solvent carriers which are unable to generate revenues sufficient to support necessary expenditures. Furthermore, the process is accelerated by increased levels of business; the more the physical plant is used without maintenance and replacement, the faster it deteriorates. Thus, the railroads' crisis becomes more urgent when, as now, traffic is at an all-time high and increasing. The preservation of adequate and efficient railway transportation service and, indeed, the conservation of the Nation's rail plant compels an immediate increase in revenues.

Since the Ex Parte No. 303 submission, the cost of increased material prices amounts to approximately $475 million, or 3.2 percent of freight revenues (V.S. No. 1, p. 9). Almost 30 percent of the revenues to be secured by this increase are required to meet material price increases.

A.

Overwhelming Cost Escalation Since Ex Parte 265-267 Has Prevented the Railroads from Achieving the Financial Stability which the Commission Has Held To Be Essential.

The most recent, comprehensive statement by the Commission regarding the railroads' rate of return was in Ex Parte Nos. 265-267, *Increased Freight Rates, 1970-71*, 339 I.C.C. 125, 181-82 (1971). Much of what was said there bears restatement here because it establishes the basis of the 10 percent rate increase which is proposed now:

> "We have not attempted to prescribe that rate of return on net investment which would be considered an upper limit, but we have observed that a rate as low as 4 percent is inadequate. Over 50 years ago, when the cost of hiring money was more reasonable and its purchasing power much greater, the Congress indicated that returns up to 6 per-

cent were not unreasonable. We believe that appreciably higher returns could not be held unreasonable under economic conditions now prevailing. Interest costs on money borrowed to finance improvements are as high as 9 percent. Return on net worth of other industry groups ranged from 5 percent to over 21 percent in 1969, with total public utilities enjoying a return of 10.7 percent. *A basic level of net earnings is essential if funds are to be available for investment in modern facilities and equipment to meet the demands of an expanding economy. A reasonable earning capacity and a respectable dividend record are both essential to raise equity funds. The ability to borrow on reasonable terms requires financial stability.*

"The net investment of class I carriers on December 31, 1969, excluding accounts 80 and 90, was $27,417,853,257. Shareholders' equity on that date we have calculated at $16,243,362,000. Rate of return on the average net investment during 1969 was approximately 2.36 percent, and on net worth about 4.0 percent.

"Net railway operating income in 1969 was $654,-300,000. A net revenue of $1,645,071,000 after taxes would be required to approximate a rate of 6 percent on the net investment of $27.4 billion. This amount would produce a rate of slightly under 8 percent on shareholders' equity. *Our use of these rates of return in this discussion is not to be taken as an indication that rates of return of 6 percent on net investment or 8 percent on net worth represent the maxima under present conditions, but rather, that they represent the rates of return which the respondents must make every effort to attain if they are to be in a position to provide the improved services which will be needed in the future.*" *Id.* (emphasis supplied)

Verified Statement No. 1 of Mr. William F. Betts, Vice President in charge of Economics and Finance, Association of American Railroads (AAR), establishes

that despite a record year in 1973 during which the rail carriers had more business than any time in history, their financial performance has not meaningfully improved since that described in the passage quoted above. The national rate of return on net investment for 1973 of 3.08 percent is less than the 4 percent level which "is inadequate" and is up from 1969 by only seven-tenths of one percent. The railroads' lag behind other industry groups, including total public utilities, has remained at approximately the same levels.

Following the matter quoted above, the Commission set forth the amount of additional revenue necessary to produce a rate of return of 6 percent and found that it could be generated by a nationwide rate increase of 13.2 percent. To the end of enabling the carriers to improve their rates of return, freight rates were authorized to be increased generally by 14 percent in the East, 12 percent in the West and 6 percent in the South. *Id.* at 182-83.

During the years 1971-73, the railroads experienced cost escalations—principally in wages, fuel and materials—of over $2.5 billion on an annual basis, of which less than $800 million was offset by increases authorized in Ex Parte No. 281, *Increased Freight Rates and Charges, 1972*, 341 I.C.C. 290 (1972) and Ex Parte No. 295, *Increased Freight Rates and Charges, 1973, Nationwide*, 344 I.C.C. 589 (1973). This left approximately $1.7 billion of cost escalation—which, of course, does not include any capital expenditures—with which the carriers had to cope. Thus, the additional revenues which the Commission authorized in Ex Parte No. 267 in hope of bringing rail earnings up to 6 percent as a minimum objective were consumed by cost escalations, owing to the failure or inability of railroads ot request timely and adequate further rate increases and failure of the Commission to act promptly on the proposals actually filed. Evidence of the result of those actions is found in 1971, 1972 and 1973 net earnings which were less than one-half the amounts needed for an average 6 percent return on net investment.

B.

The Railroads' Financial Condition Is Precarious by Every Standard.

Despite record high and rising freight traffic and revenues, and despite imposition of economies and retrenchment in expenditures, railroad net earnings have only partially recovered from a decline which occurred after the mid-1960's, and they remain far below earnings of the 1950's in terms of real dollars. Since those earlier earnings, which never exceeded 4.2 percent, were inadequate in their time, the much greater inadequacy of earnings in more recent years is obvious. The problems have varied in intensity from road to road and from district to district, but the industry as a whole and virtually all railroads individually have experienced inability to meet capital requirements from internal cash flow, with consequent increase in debt at high interest rates, depletion of working capital and increasing resort to lease-financing. Coverage of fixed charges has worsened as have the debt-equity ratios.

Moreover, these adverse developments have occurred despite less than adequate expenditure programs, making adequate programs utterly unattainable at recent and current revenue levels.

Even with the benefits of increased traffic, reduced employment and substantial relief from passenger service deficits, net earnings compare favorably only with the deeply depressed earnings of other recent years. Rates of return on net investment for the year 1973 in the southern and western districts (5.40 percent in the South and 4.21 percent in the West) were not much different from those earned 20 years ago, while the Eastern District return was roughly one-seventh of an inadequate 4.1 percent earned in 1955—the best year in that decade.

Earnings margins—net profit per dollar of revenue—have shrunk alarmingly (as in the South and West) or disappeared (as in the East) as inflation has consumed the benefits of increased volume and higher rates. As compared with 1953, operating revenues in 1973 were higher by $4,132 million, yet net railway operating in-

come was $251 million less. Compared with 1972, revenues increased by $1,386 million, but N.R.O.I. increased by only $31 million. As a result, the earnings margin was cut from 10.4 cents per dollar in 1953 to 5.8 cents in 1973. Moreover, this was before taking account of a $221 million increase in fixed charges. That increase cut the profit margin after fixed charges from 6.4 cents in 1953 to 1.4 cents in the latest reported 12 months.

For western roads, the reduction in margin after fixed charges was from 6.9 cents in 1953 to 4.2 cents in 1973. For southern roads the decline was from 8.7 cents to 5.5 cents. For eastern roads the margin was 5.0 cents in 1953 while in 1973 the margin was in the red by 4.4 cents per dollar of gross.

Shrinkage in the margin is even greater when related to the increased volume of traffic. The excess of revenues over expenses, taxes, rents and fixed charges per 1,000 gross ton-miles declined from 42 cents in 1953 (and 35 cents in 1966) to 12 cents in 1973. For eastern roads there were margins of 37 cents in 1953 and 28 cents in 1966, but there was a loss of 43 cents per 1,000 GTM in 1973. The margin for southern roads was 57 cents in 1953 but only 42 cents in 1973. For western roads the decline was from 41 cents in 1953 (and 38 cents in 1966) to 29 cents in the most recent reported 12 months. None of these comparisons takes account of the decline in the value of money.

While railroads were able to survive on rates of return of 4 to 5 percent in the early 1950's when they could borrow equipment money for 3 percent or less, those days are long gone and may be gone forever. Equipment obligations now outstanding carry rates averaging about 7 percent and new money is demanding more than 8 percent. There are hopes but no assurance that the cost of borrowing will decline. Obviously, considering today's higher costs of capital and cheapened dollar, earnings very much higher than those of the early 1950's are required just to reach parity with the earnings of that period, and again, those earnings were inadequate.

C.

Massive Additional Expenditures Are Required for Maintenance and Capital Investment.

The railroad industry is capital-intensive and must generate huge amounts of capital annually just to replace stationary facilities and equipment as it becomes worn out or obsolete. When earnings are inadequate to support this level of spending, as now, then a process of asset liquidation occurs, accelerating as facilities and equipment are consumed by increased traffic. Even if the liquidation of assets is arrested by earnings sufficient to support maintenance and replacement, there is a further need to modernize and expand capacity if the railroads are to be able to meet sharply increasing demands upon them for economic and efficient transportation. There is presently an abundance of data and analysis which reliably establishes that billions of dollars are needed immediately and in the coming decade for maintenance and improvement of the Nation's rail transportation plant.

1. *The ASTRO Study and ASTRO II*

The Commission discussed in Ex Parte Nos. 265-267, *supra*, the ASTRO report which it described as the results from

> ". . . a study group which sought to analyze and predict the need for rail service through 1980 and the capital requirements and improvements necessary to provide that service." (339 I.C.C. at 180)

Pertinent excerpts from this report are submitted herewith in V.S. No. 3 of Burton N. Behling. It demonstrates a compelling need for increased annual expenditures in excess of $3 billion through 1980.

The ASTRO report has been updated and expanded to cover the period 1974 through 1983 in ASTRO II which is presented in the aforementioned V.S. No. 1 of William F. Betts. It confirms the findings of the original report and projects that additional expenditures are required to meet the capital needs through 1983. It points out, also,

that the inflationary forces have resulted in large price increases since the time of the original ASTRO report.

2. *DOT's 1972 National Transportation Report*

The Department of Transportation in its *1972 National Transportation Report* cited another industry estimate that more than $4 billion annually should be spent by the railroads in order to "increase their performance in terms of delivery times, schedule reliability, car service and loss and damage by certain specific levels . . ." The Department also published its own more conservative estimate that $31 billion needed to be spent by railroads in the decade 1971-1980. The DOT estimate of needs included $22 billion for replacement of property retired and $9 billion for expansion to serve increased traffic and new services. This is also discussed in Mr. Betts' VS. No. 1.

3. *The Foster Study*

J. Rhoades Foster presents a comprehensive analysis in V.S. No. 8 which shows that the cost of capital to the railroad industry justifies a rate of return on net investment of at least 10 percent as fully reasonable.

D.

The New Revenues Generated By the Proposed Rate Increase Will Fall Short of the Full Amounts Needed and Will Not Exceed Levels Recognized as Reasonable by the Commission.

The 10 percent increase plus the additional increase still pending in Ex Parte No. 303 would produce, if fully applied, interstate and intrastate, approximately $1,600 million annually. Line 2 of Table 7 of V.S. No. 1, as drawn from the Schedule B individual road reports, shows that $932 million would be consumed by increases in expenses, taxes and rents. This would leave remaining $668 million to increase net railway operating income. The rate of return resulting from that addition to NROI would be 5.27 percent for railroads of the United States,

a return less than that noted in the Ex Parte No. 267 decision as falling short of an adequate level of earnings.

E.

The Problems of the Industry as Described by Railroad Chief Executives and Operating Officers Demonstrate the Necessity of Prompt Application of the Increase.

This record contains verified statements of Chief Executives and Operating Officers of railroads which describe the problems and needs of their railroads. That evidence, which complements the industry data, is set forth in the following verified statements:

V.S. No.	Affiant	Railroad
10	Gregory W. Maxwell	Erie Lackawanna
11	Alan S. Boyd	Illinois Central Gulf
12	C. E. Bertrand	Reading
13	Jervis Langdon, Jr.	Penn Central
14	John F. Nash	Lehigh Valley
15	R. D. Timpany	Central of New Jersey
16	W. Graham Claytor, Jr.	Southern
17	W. Thomas Rice	Seaboard Coast Line
18	John P. Fishwick	Norfolk & Western
19	Horace N. Foster	Maine Central
20	Worthington L. Smith	Milwaukee
21	William J. Dixon	Rock Island
22	Theodore E. Desch	Rock Island
23	R. D. Spence	Southern Pacific
24	R. N. Whitman	Missouri-Kansas-Texas
25	L. W. Menk	Burlington Northern
26	L. S. Provo	Chicago & North Western

Mr. Langdon, President of Penn Central, testifies (V.S. No. 13):

"In this proceeding it is of critical importance that the Commission allow the increased rates to become effective on ten days' notice. At stake is the continuance of transportation services in the North-

east, particularly by Penn Central. Our cash problem is so severe—much more serious than forecast earlier this year—that the continued payment of payrolls during the weeks ahead is threatened. If payrolls cannot be met, the railroad stops. This would be a disaster for the national economy."

Mr. Langdon's testimony describes the plant deterioration, decline in car fleet and increase in unserviceable cars that have resulted from inadequate cash flow. His testimony includes a cash flow statement which indicates a cash deficit of $38.9 million in August 1974. Stating that the 10 percent increase would produce $170 million increased annual revenues for Penn Central—or approximately $14 million monthly—Mr. Langdon testified:

"Under the time schedule as contemplated by the short-notice petition, the added revenue would arrive just in time to cover the August short-fall of $40 million and go on to eliminate the cash problem of the first quarter of 1975 when, according to our present computations, the deficit would grow to $63.4 million.

"In addition to eliminating Penn Central's cash deficit, certainly over the short term, a Commission order allowing the increased rates by May 2 would provide the money with which to make a respectable start this year in upgrading the condition of our plant and equipment. On an annual basis, Penn Central, after relieving the presures of a chronic cash deficit, would allocate more than $100 million of the total increased revenue of the $170 million to stepped-up track work and equipment repairs."

Mr. Desch Chairman of the Board and Chief Executive Officer of the Rock Island, referring to Rock Island's losses for the past nine years, testifies that (V.S. No. 22):

". . . it is a notorious fact that the long-continuing substandard rate of return of the railroad industry has deprived the public of a modern efficient railroad system."

and that

"Rock Island must have Commission recognition of its financial needs. A deficit cash flow has made it impossible to implement maintenance projects that spell preservation of railroad service."

Speaking to the urgency of this petition, Mr. Desch states:

"Short-notice authority, 10 days, is absolutely essential for Rock Island. Publication of statutory notice (30 days) would result in a forfeit of $2 million by Rock Island. When fully effective, the 10 percent rate increase will yield almost $36 million a year, $3 million a month, and one million dollars every 10 days. The refund rule protects any shipper inadvertently subjected to a rate or charge subsequently found to exceed the just and reasonable standard."

"On the other hand, Rock Island could never recover for movements originated in the additional 20-day waiting period."

Mr. Dixon, President of Rock Island, also urging promp action, testified (V.S. No. 21):

"Rock Island has an immediate need for additional revenues. Mounting inflation is taking such a total of present revenues that vitally needed repair and rehabilitation projects essential to the provision of satisfactory service to the shipping and traveling public must either be discontinued or held in abeyance."

Mr. Maxwell, President of Erie Lackawanna, testified (V.S. No. 10):

"The need for such increase for the benefit of the entire industry is manifest. With respect to EL, which has been in reorganization under Section 77 of the Bankruptcy Act since June 1972, the need is also critical. We believe that the Commission must either permit additional freight rate increase which will provide funds needed (i) to raise maintenance and service standards, (ii) to improve the railroad in-

dustry's position in the money markets, and (iii) to effect essential capital expenditures, or be faced with a continuing decline in the fortunes of the railroad industry and subsequently expenditure of substantial federal funds to rescue the industry."

Mr. Maxwell concludes:

". . . The Commission, therefore, should act promptly in approving the increase which would go a long way toward providing the funds needed to ensure continuation of essential rail service. Moreover, the additional funds available to EL will permit acceleration of the Trustees' reorganization program. Prompt Commission action in granting necessary freight rate relief should ensure that the federal government will not at some point have to pump large sums of money into a dying railroad industry.

Mr. Bertrand, President and Chief Executive Officer of the Reading states (V.S. No. 12) that it "is absolutely imperative to Reading Company that the proposed increases be granted on the requested short notice." Mr. Bertrand testifies that:

". . . Unless we have more revenue we cannot continue to maintain our existing fleet of rolling stock and make the necessary repairs, additions and betterments to our rail lines so that we will be able to perform transportation services necessary to the maintenance of our portion of the national transportation system. Needless to say that without additional infusion of revenue dollars the addition to our fleet of sorely needed freight cars would be out of the question."

Mr. Fishwick, President of Norfolk and Western, states (V.S. No. 18):

"For years the railroads have been consuming themselves. They have not had the minimum profit necessary to maintain their facilities and equipment. Their cash flow and credit have not been sufficient

to enable them even to replace, much less modernize, facilities and equipment acquired years ago at prices far below today's cost levels. The result has been an industry admittedly incapable of providing rail transportation of the quality required by the American economy. Some railroads have already consumed so much of their assets that they have become bankrupt. There are current prospects that others may follow, and some of the bankrupt railroads, unless rescued by government funds, may have to cease operations.

"This lamentable condition has been brought about because of poor earnings. The railroads' rates of return on investment and on stockholders' equity are shockingly low when compared to other industries. No industry can survive indefinitely with a rate of return on investment of about 3% when the cost of money, as measured by the prime rate, ranges between 8% and more than 10%."

He also testified that:

"In the last several years, we have committed more of our operating expense dollar to the maintenance of facilities, yet this still is not sufficient to reverse the trend of deteriorating properties.

"The increased revenues will permit us to put more money into maintenance. In anticipation of increased revenues, NW's rail program for 1975 will be stepped up."

Mr. Boyd, President and Chief Executive Officer of Illinois Central Gulf, testified that there have been years of inadequate spending on maintenance of facilities and way (V.S. No. 11) and that capital spending levels are inadequate. He testified that:

"The inadequacy of maintenance expenditures past and present, is having an increasingly adverse impact on efficiency."

and that:

"It is obvious that substantial increases in revenues are needed to prevent further plant deterioration."

Similarly, Mr. Smith, President of the Milwaukee Road, testifies in respect to insufficient maintenance expenditures in the past as follows (V.S. No. 20):

> "With this history of inadequate earnings in recent years, the Milwaukee has been hard pressed to allocate to the maintenance of its plant and to the acquisition of new equipment the amount of monies it would have desired for these purposes. The 10 percent increase in revenues being sought in this proceeding should enable the Milwaukee to better meet its current need in these areas. I am hopeful that the increased revenues resulting from the proposed 10 percent freight rate increase will enable us substantially to expand our existing budget for maintenance of way, maintenance of equipment, and acquisition of equipment. This would result in a significant improvement to our overall plant and enable us to provide improved service to the public."

Mr. Foster of Maine Central, testifies that (V.S. No. 19):

> ". . . an immediate increase in freight rates is required if we are to service our debt, restore working capital, attract debt and equity capital, and gain financial stability to properly serve the shippers and receivers of freight in our territory."

Mr. Timpany, of the Central of New Jersey, which is in reorganization, urges that the increases be permitted on ten days' notice (V.S. No. 15). He testifies:

> "In addition to sustaining repeated operating deficits over a number of years the CNJ has incurred a substantial amount of deferred maintenance because of the lack of adequate funds. This impairs its ability to provide the public with safe, adequate, economical, and efficient service as required by the National Transportation Policy. The lack of adequate funds also enlarges the recurring problem of meeting ever-increasing payrolls and material costs."

The Lehigh Valley does not now have sufficient cash to operate beyond June 30, 1974 and must have immediate

relief. Mr. Nash, Trustee and Chief Operating Officer of that railroad testified (V.S. No. 14):

> ". . . The proposed ten percent increase in freight rates is absolutely necessary immediately if the Lehigh Valley is to postpone cessation of operations on June 30, 1974. The proposed increase will generate additional annual LV gross revenue of approximately $6.5 million or a net cash amount of $4.3 million. This will help halt the rapid decrease in our cash position."

Mr. Claytor, President of Southern, testifies that (V.S. No. 16):

> "Southern supports the railroads' petition seeking authorization to publish the proposed increase as a means of improving the overall railroad industry's ability to cope with the ever increasing demands upon resources which are unfortunately in many cases insufficient to meet those demands."

He states that:

> "Many more capital improvements are needed on Southern, and these will have to be made at much higher unit cost than in the past. To support these needs even our 'relatively good' rate of return on investment is inadequate. Southern is far from immune from the continuing inflationary pressures affecting the industry as a whole."

In concluding his testimony, Mr. Claytor testified:

> "Railroads and all industry are now facing a real challenge. Forced by circumstances to make the most productive use of petroleum energy, the country must come to rely more upon the most economic users of energy. In the freight transportation business, that means the railroads. The railroads are four times as efficient in the use of fuel as highway trucks, the principal form of competition. Thus, the important role the railroads play in the national economy, coupled with their efficient use of energy, should provide sufficient incentive for the Commission to act favor-

ably upon any proposal which will contribute towards a stronger railroad industry. I believe the instant proposal deserves prompt approval as a step in the right direction."

Mr. Spence, Vice President-Operations of Southern Pacific, speaks to the urgency of the problem as follows (V.S. No. 23):

> "Inadequate revenues and return on investments during the past several years have placed the railroads of this country in an emergency circumstance. The bankrupts and near-bankrupts speak for themselves, and their impact on the other carriers is obvious, but the so-called 'prosperous' railroads have not escaped the impact of rising costs and a decreased ability to do the transportation job this nation demands of its rail systems. . . .
>
> "But the moment of truth is here. Cost control has consumed a substantial share of the resources and strengths needed to respond to current as well as future transportation requirements of the shippers of this country. * * * The pricing system now must allow a make-up factor for deferred maintenance, particularly locomotives, cars and track. Furthermore, we absolutely must generate capital improvement funds for improvement and expansion of our plant."

Mr. Rice, Chairman and Chief Executive Officer of Seaboard Coast Line and Louisville and Nashville, described in detail major improvement programs that should be undertaken on his railroads. While major accomplishments have been realized, they were not made out of earnings. Mr. Rice said (V.S. No. 17):

> "In order to finance the above improvements, we had to borrow $75 million, and discontinue cash dividends during the last half of 1973."

A review of the executive testimony shows that the urgent need for increased revenues is expressed by the presidents of the railroads throughout the country. The need is not limited to any particular territory nor is the need

limited to the obvious extreme situations of the railroads which are in reorganization of hovering on the brink of reorganization. The executive testimony demonstrates a deep-felt concern about the ability of the railroad system to meet the transportation requirements of this country. That testimony also demonstrates a serious concern that the financial limitations of the past have sapped some of the vitality of the industry in the form of decreased maintenance programs and decreased car repair programs which must be remedied. This testimony fairly presents to the Commission a serious transportation problem. The Commission should take a first step to the solution of this problem by the granting of this petition.

IV.

WITH THE INCREASES RAILROAD EARNINGS AND RATE OF RETURN WILL CONTINUE TO BE LOW AS CONTRASTED WITH OTHER INDUSTRIES

For the year 1972 the railroad industry's rate of return ranked 69th out of 70 industrial groups (V.S. No. 1, Exhibit A, p. 18). While there was some improvement in railroad earnings during 1973, they remained low. During 1973 net railway operating income was only 5.8 percent of operating revenues and, after provision for fixed and contingent charges was but 1.4 percent of operating revenues. For 1973 the railroad industry's rate of return on net investment was only 3.08 percent, a small gain from the perilously low rate of return of 2.96 percent for the year 1973. Rails did not keep pace with the 27 percent increase in corporate profits after taxes, 1973 over 1972 (V.S. No. 1, p. 17).

The low ranking of the railroads, which in 1972 had a rate of return less than one-third of the rate of return of public utilities and less than one quarter of the rate of return of manufacturing firms, will not be substantially changed by prompt application of a 10 percent increase. With application of the proposed increase on an annual basis the industry net railway operating income is estimated at $1,658.5 million and rate of return on net in-

vestment at 5.27 percent (V.S. No. 1, Exhibit E and Table 7). Railroads' rate of return would remain near last place among the 70 corporate groups. In contrast to the 5.27 percent which the proposed rates would yield for the railroads, it may be noted that the AT&T System announced on April 18, 1974, that its current rate of return is 8.56 percent, the highest since 1929.

V.

WITH THE INCREASE THE TREND OF RAIL RATES WILL CONTINUE TO LAG BEHIND COMMODITY PRICE INCREASES

The railroads have been victims of inflation. Their rates have not kept pace. Mr. Fishwick, President of Norfolk and Western, testifies that "Our rates have generally gone up much less than the price of most of the products we carry, and the spread will no doubt be widened by expiration of price controls" (V.S. No. 18). Mr. Betts' testimony demonstrates this fact. Mr. Funkhouser, Senior Vice President, Penn Central, presented data showing that from August 1971, when price controls were imposed, to April 1, 1974, the Wholesale Price Index of all commodities increased 32.7 percent as contrasted with a 17 percent increase in the freight rates on all commodities (V.S. No. 31). This disparity will be increased when price controls expire on April 30. Thus with the 10 percent increase the trend of rail rates will continue to lag behind the commodity price trend.

VI.

THE PROPOSED INCREASE WILL HAVE A BENEFICIAL IMPACT ON THE ENVIRONMENT

If the railroads do not have the revenues necessary to continue operations with adequate equipment and facilities, more and more traffic will end up moving by other modes which utilize fuel less efficiently and result in greater air pollution per unit of transportation. See *National Science Foundation Study, Energy Intensiveness of*

Passenger and Freight Transport Modes, Oak Ridge National Laboratory, April 1973. As noted by John R. McMichael of the Norfolk and Western Railway Company (V.S. No. 34), and F. J. Wright of Santa Fe (V.S. No. 37), there is danger of diversion from more efficient railroads to the less efficient truck by deterioration of the railroad plant through lack of funds.

The proposed increase will not have any effect on the movement of recyclable commodites (V.S. No. 42) and, if it could possibly be shown that it does, necessary adjustments would be made to assure continued movement of the traffic at compensatory levels, as will be done with all classes of traffic (V.S. No. 27, Affiants Souby, Bowers and Smith).

In addition to needing additional funds to maintain their service the railroads will require substantial amounts of money to continue their various pollution control programs which are subject to very large cost increases (V.S. No. 5, Affiant W. J. Harris, Jr.).

VII.

THE INCREASE WILL NOT ADVERSELY AFFECT THE MOVEMENT OF TRAFFIC

A basic consideration entering into the railroads' determination to make a general increase in freight rates and charges, is the impact such increases will have on their busines. The Chairmen of the Traffic Executive Associations of the three major territories have testified that this question has been an important and limiting factor in determining whether or not to seek a rate increase and in determining the amount of increase to be sought (V.S. No. 27). These traffic officers have been successful in preserving and enlarging their business. In 1973, the railroads hauled more freight traffic than in any other year in their history—852 ton-miles—up almost 10 percent from 1972 which itself was a record year. Even more impressive from a statistical point is the fact that in 1973, railroads increased their share of total freight transportation business by almost a full percentage point to 38.6 percent, according to prelimi-

nary data compiled by the Transportation Association of America. This record demonstrates that the judgment of the traffic officers is sound and deserving of credibility.

The traffic officer of a railroad would have much to lose by joining a rate increase that would dry up the business of his railroad or divert it to other modes of transportation. Therefore, the judgment of the traffic officers in respect to an increase is necessarily impartial and of probative value.

Verified statements of the following traffic officers deal with the impact of the 10 percent increase on the movement of traffic:

V.S. No.	Affiant
28	M. F. Coffman
29	Paul H. Reistrup
30	O. J. Benjamin
31	A. Paul Funkhouser
32	C. R. O'Rourke
33	J. F. Dunseth, Jr.
34	John R. McMichael
35	W. P. Barrett
36	Ray H. Smith
37	F. J. Wright
38	L. J. Tamisiea

Mr. McMichael, Vice President, Pricing and Marketing of Norfolk & Western, is of the opinion that the increase will not result in significant diversion from rails (V.S. No. 34). He amplified his views as follows:

> "I am of the firm opinion this country faces a far greater danger of having traffic diverted from the more efficient railroads to less efficient truck transportation by the deterioration of the railroad plant through lack of funds to make badly needed track improvements, construct increased yard facilities and purchase additional rolling stock and locomotives than through a 10% increase in freight rates."

Mr. Reistrup, the Vice President-Traffic of Illinois Central Gulf, is of a similar opinion (V.S. No. 29). He testified:

> "I am convinced that a large part of the relatively greater growth the railroads' competitors have enjoyed in the last two decades has been the result of poor rail service, rather than rate disabilities."

Mr. Wright, a traffic officer of the Santa Fe, sees the real threat of diversion as a lack of ability to handle the traffic—not rate charges (V.S. No. 37), and Mr. Tamisiea, Vice President of Kansas City Southern, states that diversion will occur if the plant is not improved (V.S. No. 38).

These views are confirmed by the experience of Penn Central, Erie Lackawanna and Reading. Mr. Funkhouser, Senior Vice President of Penn Central, presented evidence of a revenue loss to Penn Central of approximately $18.5 million during the first quarter of 1974 due to car shortages (V.S. No. 31). Mr. Coffman, Vice President-Traffic of Erie Lackawanna, testifies that his railroad lost more than $17 million during 1973 due to inability to supply equipment (V.S. No. 28). Mr. Benjamin, Vice President-Traffic of Reading, estimates that his road lost $2.5 million freight revenues in 1973 because of shortage of equipment (V.S. No. 30).

The increase will not adversely affect movement of traffic because of increases in cost and rates of carriers of other modes. This is well documented. Mr. Barrett, Vice President-Traffic of Union Pacific, testified that (V.S. No. 35):

> "We do not believe that there will be substantial diversion from rail to other modes of common carrier transportation or to private carriage if the increases sought by this proceeding are granted. Certainly, motor carrier costs have increased substantially in recent months and the end cannot be foreseen."

Mr. Funkhouser also stated that (V.S. No. 31):

> "The principal competition experienced by the railroads is from highway carriage, both for-hire

and private. The cost of providing highway transportation is increasing. One of the important costs of highway carriage is the cost of fuel. While the fuel crisis has affected the railroads, trucks require more fuel to haul a ton of freight than railroads, with estimates indicating that the fuel required to transport a ton of freight ranges from three to six times the amount of fuel required for equivalent rail transportation. Thus, the long-term effect of the fuel crisis is one which should cause an increase in the rail movement of traffic and an additional reason why a 10% increase in freight rates and charges will not be self-defeating."

Mr. Reistrup of the Illinois Central Gulf, whose railroad is as barge-competitive as any railroad in the country, testifies that (V.S. No. 29):

"It is our assessment that the barge rates in many instances have doubled in the past year and a half giving the competing railroads more room to increase rates without severe risk of diversion. Further, barges are in short supply, there is terrific congestion on the waterway systems, and the lead time for getting delivery of a new barge is close to three years at present. All of these factors indicate that the barge lines have constraints which severely limit their capacity to divert rail tonnage.

"Although railroads and barges use about the same amount of fuel per net ton-mile, fuel costs are a greater proportion of barge costs and revenue than they are of railroad costs and revenues as is borne out by the fact that the barges have a surcharge of about 4½ percent for fuel compared with the current rail surcharge of 2.8 percent.

"All of these factors convince me that the rate increase of 10 percent will not cause significant diversion of rail competitive traffic vis-a-vis barge or truck-barge which is more frequently the rail competing combination."

Recognizing the dynamics of the transportation field, Mr. Smith, Vice President-Traffic of the Soo Line, testified that (V.S. No. 36):

"It has been the consistent policy of the Soo Line to adjust its rates and service wherever possible so as to remain competitive with other transportation companies and to keep its shippers competitive in important markets. The Soo Line will continue this policy. If the proposed rate increase is approved, it will be closely watched and, where necessary, adjustments will be made in both service and pricing to meet competition both from other carriers and to preserve market relationships. In view of the present high demand for railroad service I do not anticipate that many such adjustments will be required."

The testimony of the many responsible traffic officers is fairly reflected in Mr. Funkhouser's conclusion that (V.S. No. 31):

"In my opinion, the uniform, across-the-board 10% increase in freight rates and charges proposed here is reasonable. It can be applied without adversely affecting the movement of traffic. Because of its uniformity, all classes of traffic will be required to share evenly in the increase. As I have heretofore mentioned, the limitation on Penn Central's volume is not price, but is car supply and condition of plant. It is my view that if the increase is allowed, funds will be available to improve plant, car supply and service, so the consequence will be an increased volume of traffic as a result of the increase in freight rates. It is urgent that the increase be made effective on ten days' notice so that we can get about the business of improving the railroad."

It is clear that the 10 percent increase will not restrict the movement of traffic.

VIII.

CONCLUSION

The emergency is great; the problem calls for help. The Interstate Commerce Commission should exercise the discretion granted it by Congress and permit the filing of the proposed tariff to become effective on May 2, 1974, or as soon thereafter as possible, upon not less than ten days' notice.

Respectfully submitted,

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/s/ Thormund A. Miller
/s/ Albert B. Russ, Jr.
/s/ James L. Tapley

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C. HAROLD PETERSON
CHAS. C. RETTBERG, JR
ALBERT B. RUSS, JR.
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APPENDIX I

Eastern Railroads

Akron & Barberton Belt Railroad Company, The
Akron, Canton & Youngstown Railroad Company, The
Algers, Winslow and Western Railway Company
Aliquippa and Southern Railroad Company
Alton & Southern Railway Company
Ann Arbor Railroad Company, The
Arcade and Attica Railroad Corporation
Aroostook Valley Railroad Company

Baltimore and Annapolis Railroad Company, The
Baltimore and Eastern Railroad Company
Baltimore & Ohio Chicago Terminal Railroad Comanpy, The
Baltimore and Ohio Railroad Company, The
Bangor and Aroostook Railroad Company
Bath and Hammondsport Railroad Company
Beech Mountain Railroad Company
Belfast and Moosehead Lake Railroad
Bellefonte Central Railroad Company
Belt Railway Company of Chicago, The
Bessemer and Lake Erie Railroad Company
Black River & Western Corporation
Boston and Maine Corporation
(Robert W. Meserve, Trustee)
Boyne City Railroad Company
Brooklyn Eastern District Terminal
Buffalo Creek Railroad
(Erie Lackawanna Railway and
Lehigh Valley Railroad Company, Lessees)
Bush Terminal Railroad Company

Cadillac & Lake City Railway Company
Cadiz Railroad Company
Cambria and Indiana Railroad Company
Canadian Pacific Limited on Behalf of
Canadian Pacific Lines in Maine
Canadian Pacific Limited on Behalf of
Canadian Pacific Lines in Vermont

Canton Railroad Company
Central Indiana Railway Company
Central Railroad Company of New Jersey, The
(R. D. Timpany, Trustee)
Central Vermont Railway, Inc.
Chesapeake and Ohio Railroad Company, The
Chesapeake Western Railway
Chestnut Ridge Railway Company
Chicago & Illinois Railroad Company
Chicago & Illinois Midland Railway Company
Chicago & Illinois Western Railroad
Chicago and Western Indiana Railroad Company
Chicago Heights Terminal Transfer Railroad Company
Chicago River and Indiana Railroad Company, The
Chicago South Shore and South Bend Railroad
Chicago, West Pullman & Southern Railroad Company
Claremont & Concord Railway Company, Inc.
Clarendon and Pittsford Railroad Company, The
Conemaugh & Black Lick Railroad Company
Cooperstown and Charlotte Valley Railway Corp., The
Coudersport and Port Allegany Railroad Company
Curtis Bay Railroad Company
Cuyahoga Valley Railway Company, The

Dansville and Mount Morris Railroad Company, The
Delaware and Hudson Railway Company
Delray Connecting Railroad Company
Detroit and Mackinac Railway Company
Detroit and Toledo Shore Line Railroad Company, The
Detroit Terminal Railroad Company
Detroit, Toledo and Ironton Railroad Company

East Erie Commercial Railroad
East Jersey Railroad and Terminal Company
East St. Louis Junction Railroad Company
East Washington Railway Company
Elgin, Joliet and Eastern Railway Company
Erie Lackawanna Railway Company
(Thomas F. Patton and Ralph S. Tyler, Jr., Trustees)
Everett Railroad Company, The

Fairport, Painesville and Eastern Railway Company
Ferdinand Railroad Company

Fonda, Johnstown and Gloversville Railroad Company
Fore River Railroad Corporation
Frankfort & Cincinnati Railroad Company

Genesee and Wyoming Railroad Company
Grafton and Upton Railroad Company
Grand Trunk Railway System
(Lines in the United States East of the West Bank of the Detroit and St. Clair Rivers), comprising the following carrier:
Canadian National Railway Company
Grand Trunk Western Railroad Company
Green Mountain Railroad Corporation
Greenwich & Johnsonville Railway Company

Hoboken Shore Railroad
Hoosac Tunnel and Wilmington Railroad Company

Illinois Northern Railway
Illinois Terminal Railroad Company
Indiana Harbor Belt Railroad Company
Indianapolis Union Railway Company
Ironton Railroad Company, The
(Lehigh Valley Railroad Company and Reading Company, Lessees)

Johnstown and Stony Creek Rail Road Company

Kanawha Central Railway Company, The
Kelley's Creek and Northwestern Railroad Company
Kentucky & Indiana Terminal Railroad Company

Lackawanna and Wyoming Valley Railway Company
Lake Erie and Eastern Railroad
Lake Erie and Ft. Wayne Railroad
Lake Erie, Franklin & Clarion Railroad Company
Lakefront Dock and Railroad Terminal Company, The
Lake Terminal Railroad Company, The
Lehigh and Hudson River Railway Company, The
(John G. Troiano, Trustee)
Lehigh and New England Railway Company
Lehigh Valley Railroad Company
(R. C. Haldeman and John F. Nash, Trustees)

Livonia, Avon & Lakeville Railroad Corporation
Lorain & West Virginia Railway Company, The
Louisville and Nashville Railroad Company
Lowville and Beaver River Railroad Company, The
Ludington & Northern Railway

Maine Central Railroad Company
Manufacturers' Junction Railway Company
Manufacturers Railway Company
Maryland and Pennsylvania Railroad Company
Massena Terminal Railroad Company, The
McKeesport Connecting Railroad Company
Middle Fork Railroad Company
Middletown and New Jersey Railway Company, Inc.
Midway Railroad Company
Monongahela Connecting Railroad Company, The
Monongahela Railway Company, The
Montour Railroad Company
Montpelier & Barre Railroad Company
Morehead and North Fork Railroad Company
Morristown & Erie Railroad Company
Moshassuck Valley Railroad Company
Mount Hope Mineral Railroad Company

Narragansett Pier Railroad Company, Inc., The
Napierville Junction Railway Company
Newburgh and South Short Railway Company, The
New Hope & Ivyland Railroad Company
New Jersey, Indiana & Illinois Railroad Company
New York and Long Branch Railroad Company, The
New York Connecting Rail Road Company, The
New York Dock Railway
New York, Susquehanna and Western Railroad Company
Niagara Junction Railway
Norfolk & Portsmouth Belt Line Railroad
Norfolk and Western Railway Company
Norfolk, Franklin and Danville Railway Company
Northampton and Bath Railroad Company
Norwood & St. Lawrence Railroad Company

Ogdensburg Bridge and Port Authority

Patapsco & Back Rivers Railroad Company

Pennsylvania and Atlantic Railroad Company
(Note—South of Hightstown, N. J. to Pemberton, N. J., incl.) (The Union Transportation Company, Lessee)
Penn Central Transportation Company
(George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees)
Pennsylvania-Reading Seashore Lines
Peoria and Pekin Union Railway Company
Philadelphia, Bethlehem and New England Railroad Company
Pioneer and Fayette Railroad Company, The
Pittsburgh & Shawmut Railroad Company, The
Pittsburgh, Allegheny & McKees Rocks Railroad Company
Pittsburgh and Lake Erie Railroad Company, The
Pittsburgh and Ohio Valley Railway Company
Pittsburgh, Chartiers & Youghiogheny Railway Company
Port Huron and and Detroit Railroad Company
Port Jersey Railroad Company
Portland Terminal Company
Providence and Worcester Railroad Co.

Quebec Central Railway Company

Rahway Valley Railway Company
(Rahway Valley Company, Lessee)
Raritan River Pail Road Company
Reading Company (Richardson Dilworth and Andrew L. Lewis, Jr., Trustees)
Richmond, Fredericksburg and Potomac Railroad Company
River Terminal Railway, The
Rosslyn Connecting Railroad Company

St. Johnsbury & Lamoille County Railroad
Skaneateles Short Line Railroad Corporation
South Brooklyn Railway Company
South Buffalo Railway Company
Springfield Terminal Railway Company (Vermont)
Staten Island Railroad Corporation, The
Steelton & Highspire Railroad Company
Stewartstown Railroad Company, The
Strasburg Rail Road Company

Strouds Creek and Muddlety Railroad

Terminal Railroad Association of St. Louis
Toledo, Angola & Western Railway Company, The
Toledo, Peoria & Western Railroad Company
Toledo Terminal Railroad Company, The
Toronto, Hamilton and Buffalo Railway Company, The
Trenton-Princeton Traction Company
Twin Branch Railroad Company

Union Railroad Company
Unity Railways Company
Upper Merion and Plymouth Railroad Company

Vermont Railway, Inc., The
Virginia Blue Ridge Railway
Virginia Central Railway

Warwick Railway Company
Washington Terminal Company, The
Waynesburg and Washington Railroad Company
Wellsville, Addison & Galeton Railroad Corporation
Western Maryland Railway Company
West Virginia Northern Railroad Company
Wharton and Northern Railroad Company
Wilkes-Barre Connecting Railroad
Winfield Railroad Company, The
Winifrede Railroad Company
Wyandotte Southern Railroad Company
Wyandotte Terminal Railroad Company

Youngstown and Northern Railroad Company, The
Youngstown & Southern Railway Company

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[Other appendices omitted]

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Verified Statement No. 1
Affiant: W. F. BETTS

BEFORE THE INTERSTATE
COMMERCE COMMISSION

[Exparte No. 305, Filed Apr. 22, 1974,
Interstate Commerce Commission]

IN SUPPORT OF EASTERN, SOUTHERN AND
WESTERN DISTRICT RAILROADS' PETITION
FOR 10 PERCENT INCREASE IN
FREIGHT RATES AND CHARGES

Verified Statement of
W. F. BETTS
Vice President
Economics and Finance Department
ASSOCIATION OF AMERICAN RAILROADS

April 1974

My name is William F. Betts. I am Vice President in charge of the Economics and Finance Department of the Association of American Railroads. My offices are at 1920 L Street, Northwest, Washington, D.C. 20036.

The Economics and Finance Department of the AAR and the Bureau of Railway Economics as it was formerly known have for many years acted as a central agency for collection, analysis and dissemination of economic data and statistics regarding the railroads and the environment in which they operate. In that role my staff has assembled the data which are submitted herewith in support of the railroads' petition for authority to publish a general increase of 10 percent in freight rates and charges.

As this evidence will clearly show, the railroad industry as a whole and virtually all of its parts is urgently in need of a substantial increase in revenues. As has been true for many years, and especially in the past eight years of accelerating inflation, railroads have failed to generate sufficient revenues to sustain desired standards of maintenance and service or to attain the level of net earnings needed to provide or attract capital for replacement and expansion of plant and equipment. Owing to price inflation, depreciation allowances are producing little more than one-half of the cost of replacing the plant being consumed, and rates of return are less than one-half the cost of new money. Record traffic volume and attainable efficiencies have fallen far short of filling the gap left by an inadequate rate level.

• • • • •

Further Cost Escalations

As indicated in footnote to Table 1 above, most cost escalations since Ex Parte 295 have been covered by rate increases in Ex Parte Nos. 299, 301 and 303. However, Ex Parte 299 covered only payroll tax increases, Ex Parte 301 covered only fuel price increases and Ex Parte 303, which embraced other cost escalations, included nothing for the cost of increased prices of materials other than fuel subsequent to October 1, 1973.

Since October 1, 1973, there have been very steep increases in prices of many articles the railroads consume in maintenance, repair and operation. For example, cross ties which cost $7.26 each in October 1973 now cost $9.10, or 25 percent more. Freight car wheels were priced at $85.66 on the average in October 1973 and $117.95 in April 1974, an increase of 38 percent. The price of car oil is up 39 percent, from 27.1 cents per gallon in October to 37.8 cents in April. Tie plates, track frogs and spikes cost 12 to 13 percent more in April than in October, and further increases in steel articles are anticipated (although not relied upon for justification of the current proposal). Lubricator pads which were $15.78 a car set in October 1973 are priced at $19.58 now, an increase of 24 percent.

The cost of increased materials prices since the Ex Parte 303 submission is approximately $475 million, or 3.2 percent of freight revenues at the Ex Parte 303 level. This amount is calculated on the basis of materials consumption shown in Ex Parte 303 and price trends shown by the AAR preliminary price index for April 1974, as shown below:

	Eastern District	Southern District	Western District
1. Annual cost of materials other than fuel at 10/1/73 price level (millions)	$858	$454	$1,361
2. Average price increase April 1974/October 1973	18.9%	17.3%	17.2%
3. Annual cost of price increase (millions)	$162	$ 79	$ 234

As related to annual freight revenues of $5,078 million in the Eastern District, $2,575 million in the Southern District, $7,367 million in the Western District and $15,020 nationally, as shown in Ex Parte 301, the annual costs of materials price increases since October 1, 1973—the base date for cost increases submitted in Ex Parte 303—are 3.2 percent in the East and West, 3.1 percent in the South and 3.2 percent nationally.

As has been noted in other rate proceedings, the annual "materials" costs include amounts spent for stationery and printing, advertising expenses and other miscellaneous charges for which the materials index is regarded as representative of price trends. The method of calculation follows the procedure employed by the Commission in constructing Table 100 in *Transport Statistics* prior to the 1963 edition.

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Capital Expenditures, Working Capital and Debt

As this Commission has noted in its reports in general rate increase cases, the railroad industry is capital-intensive. Railroads must generate massive amounts of capital annually just to replace plant and equipment as it becomes worn out or obsolete. In addition, if railroads are to provide an economical service they must modernize, and if they are to participate in the Nation's economic growth, capacity must be expanded.

The Commission's increased freight rate authorization in Ex Parte 267 in 1970-1971 was based in part on a railroad-sponsored study—the so-called "Astro Report"—indicating a need for the carriers to spend more than $3 billion per year in the period 1970-1980, for capital programs and rail and tie installations (339 I.C.C. 125, 180). A more current look at these requirements by the AAR's Staff Studies Group came to similar conclusions.

The Department of Transportation in its *1972 National Transportation Report* cited another industry estimate that more than $4 billion annually should be spent by the railroads in order to "increase their performance in terms of delivery times, schedule reliability, car service and loss and damage by certain specific levels . . ." The Department also published its own more conservative estimate that $31 billion needed to be spent by railroads in the decade 1971-1980. The DOT estimate of needs included 22 billion for replacement of property retired and 9 billion for expansion to serve increased traffic and new services.

Although there is an acknowledged need for greatly *increased* spending, the fact is that even the current and

past lower levels of capital outlays have exceeded available funds of the industry as a whole, generated from internal sources, with the result that working capital has been drawn down, equipment debt has shown a sharp and costly increase, and many railroads have turned to lease financing.

During each of the past 11 calendar years, as shown by Exhibit A, page 22, railroad capital expenditures for additions and betterments have exceeded the sum of retained income plus depreciation and retirement charges, by substantial amounts. Capital expenditures during this period amounted to more than $15 billion, exceeding cash flow by $5.5 billion. Since cash flow included $3.3 billion of income from non-operating sources, the deficiency in funds generated by railroad operations was much greater than $5.5 billion.

The inability of railroads to generate even the $1.4 billion average annual amount of actual spending emphasizes the magnitude of the deficiency in funds needed to sustain expenditures at recommended levels of $3 billion to $4 billion annually. Deficiencies in capital funds in all three districts (Exhibit A, pp. 22-25), have been reflected in reduced working capital and increased borrowing, with adverse effects on the railroads' financial posture.

Net working capital, excluding material and supplies and not including impending maturities of long-term debt, generally exceeded $600 million prior to 1966. That amount was regarded as "the minimum safe net working capital necessary for railroads" at a time when requirements were at a much lower level than they are today (Senate Subcommittee on Surfact Transportation, April 30, 1958). By the end of 1966, net working capital was down to $477 and it continued to fall, reaching a low of $14.3 million on December 31, 1971 (Exhibit A, p. 26). Net working capital improved in 1972 and 1973, but only to about one-fourth of the 1958 figure. Meanwhile, debt due within one year increased to a level of $630 million, from less than $400 million in 1958, while daily working capital requirements as indicated by average daily cash operating expenses and taxes increased by more than 60 percent. Debt maturities consist largely of

installment payments on equipment obligations and thus are not subject to refinancing.

A district breakdown of the declines in net working capital and increases in maturing debt after 1965 is shown on page 27 of Exhibit A. As there displayed, the improvement in 1973 was in the Eastern District, which still shows a negative figure, and in the Southern District, where current assets were increased by a bond issue on one railroad.[1]

Additional borrowing to finance equipment purchases has resulted in an increase of more than $2 billion in the amount of equipment debt outstanding. Latest reported figures show $4.6 billion outstanding at year-end 1972, up from $2.5 billion in 1962. The average interest rate on equipment debt was 3.93 percent in 1962, while in 1972 it was 6.72 percent and still rising, as interest rates on new issues continued to exceed the average on issues outstanding (Exhibit A, p. 28). Equipment obligations of Southern and Western railroads more than doubled during this period (pages 30-31), while those of Eastern roads rose nearly 40 percent (page 29).

While some increase in equipment debt is not unreasonable or unexpected in times of inflation and traffic growth, the magnitude of the increase which has occurred, and its cost, are cause for concern. As is clearly explained in the testimony of Dr. J. Rhoades Foster, the railroads' debt/equity ratio is already too high, and any increase in that ratio tends to cause an increase in the cost of both debt and equity capital. • • •

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"Astro II" Confirms The Railroads' Needs For Major Improvements In Revenues

A new study supplementing and building on the 1970 "Astro Report" has now been made to update the measure of the railroads' capital improvements. In addition, "Astro II" takes the analysis another step by using a computer model to project the financial impact on the industry of various means of financing these increased capital expenditures.

Using updated purchase costs for equipment, equipment service lives close to present industry averages, a finer breakdown of types of equipment needed and certain other designated changes in input data from Astro I, as detailed in Exhibit G, the 10-year projected requirements for freight cars amounted to 986,914 for Astro II and compared with 1,114,956 for Astro I. Requirements for locomotives in both studies approached 20,000 units.

To meet these and the needs specified for fixed plant, Astro I estimated 10-year capital requirements at $33 billion, and Astro II estimates the needs at $38.1 billion. Accordingly, while the basis of analysis differs in some respects, the projected needs are confirmed as involving vast amounts of funds.

The financial impact of seeking funds for such major capital improvement and maintenance programs are indicated by the computer study. Fixed charge coverage, already at low levels, would decline precipitously from 1.89 to 1.32. Prohibitive debt/equity ratios would also result from an effort to finance such capital improvement programs without adequate revenues.

Astro II is another demonstration that the industry needs to undertake major capital improvement programs and needs an improved revenue base to support their financing.

VERIFICATION

DISTRICT OF COLUMBIA,

ss:

CITY OF WASHINGTON.

William F. Betts, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

/s/ W. F. Betts
W. F. BETTS

Subscribed and sworn to before
me this 19th day of April 1974:

/s/ Ellen M. Herlihy
ELLEN M. HERLIHY
Notary Public of the District
of Columbia. My Commission
expires February 28, 1977.

Exhibit B
Verified Statement No. 1
Affiant: W. F. BETTS

[Exparte No. 305, Filed, April 22, 1974
Interstate Commerce Commission]

Before The
INTERSTATE COMMERCE COMMISSION

IN SUPPORT OF EASTERN, SOUTHERN AND WESTERN DISTRICT RAILROADS' PETITION FOR 10 PERCENT INCREASE IN FREIGHT RATES AND CHARGES

SCHEDULES A and B
EASTERN DISTRICT RAILROADS

April 1974

10 Percent Case

SCHEDULE A

Financial Data

Railroad The Baltimore and Ohio Railroad Company

Line No.	Item	Source (References are to 1973 Annual Report Form R-1. Sources of corresponding items in other years may differ).	Calendar year 1971 (thousands)	Calendar year 1972 (thousands)	Calendar year 1973 (thousands)
			(a)	(b)	(c)
1	Ordinary income	A.R. Sch. 300, line 53, col. (b	9,906	16,132	23,641
2	Net income	A.R. Sch. 300, line 58, col. (b	(34,173)	10,445	31,805
3	Depreciation and retirements-road	A.R. Sch. 320, line 47 + line 6 col. (b)	6,396	7,700	8,558
4	Depreciation and retirements-equipment	A.R. Sch. 320, line 68 + line 1 + line 82 col. (b)	11,335	11,767	11,455
5	Long-term debt due within one year	A.R. Sch. 200L, line 60, col. (b)	15,648	10,482	12,633
6	Income available for fixed charges	A.R. Sch. 300, line 44, col. (b	34,534	41,516	47,617
7	Fixed and contingent charges	A.R. Sch. 300, line 50 + line 2, col. (b)	24,628	25,385	23,976
8	Railway operating expenses	A.R. Sch. 300, line 2, col. (b	375,212	367,697	402,137
9	Taxes other than Federal income	A.R. Sch. 350, line 64 - line 9, col. (b)	34,012	35,845	41,059
10	Net equipment rents, credit (debit)	A.R. Sch. 300, line 6 through 10 - line 13 through 17, col. (b)	55,178	60,600	69,518
11	Net joint facility rents, cr. (dr.)	A.R. Sch. 300, line 11 - line 8, col. (b)	2,157	1,567	2,078
12	Railway operating revenues	A.R. Sch. 300, line 1, col. (b	495,812	502,384	555,426
13	Net railway operating income	A.R. Sch. 300, line 21, col. (b	29,097	36,510	40,231
14	Net investment in railroad property a	A.R. Sch. 200A, line 1 + line 2, col. (b), plus Sch. 211B - 1, line 39, col. (d) - col. (e) a	1,003,057	994,905	982,138
15	Shareholders' equity a	A.R. Sch. 200L, line 90 a	618,640	606,776	627,901
16	Dividends paid b	A.R. Sch. 308 b	-	-	-
17	Total current assets	A.R. Sch. 200A, line 44, col. (b)	137,663	146,022	168,301
18	Total current liabilities	A.R. Sch. 200L, line 59, col. (b)	135,565	137,425	148,859
19	Working capital ratio c	Line 17 ÷ line 18	1.02	1.06	1.13
20	Dividend pay-out ratio	Line 16 ÷ line 1	-	-	-
21	Rate of return on net investment in railroad property (percent)	Line 13 ÷ line 14 x 100	2.90%	3.67%	4.10%
22	Rate of return on shareholders' equity (percent)	Line 1 ÷ line 15 x 100	1.60%	2.66%	3.77%
23	Cash flow/current long-term debt coverage (times)	Line 1 + line 3 + line 4 ÷ line 5	1.77	3.40	3.46
24	Fixed and contingent charge coverage (times)	Line 6 ÷ line 7	1.40	1.64	1.99
25	Ratio operating expenses plus net equipment rents to operating revenue (%)	Line 8 + line 10 ÷ line 12 x 10	86.81%	85.25%	84.92%
26	Ratio operating expenses, plus taxes other than Federal income, plus net rents to operating revenue (percent)	Line 8 + line 9 + line 10 + line 11 ÷ line 12 x 100	94.10%	92.70%	92.68%

a - Show average beginning and end of year.
b - Show cash dividends only, listing non-cash dividends in footnote.
c - Working capital ratio including material and supplies and not including maturing debt.

Note: Calculate all ratios and percentages to two decimal places.

SCHEDULE B

Income Statement Data
(Actual, Present, and Constructed)

10 Percent Case

(All amounts shown in thousands)

Railroad: The Baltimore and Ohio Railroad Company

Line No.	Item	Source (For 1973 data)	Calendar year 1973-actual			Present pro forma year-freight service a		Restated pro forma year based on constructed revenue need-freight service c
			Total all services	Total freight service	Total passenger service	Based on present cost and rate levels	Based on present cost levels and proposed rates b	
			(a)	(b)	(c)	(d)	(e)	(f)
1	Railway operating revenues	A.R. Sch. 300, line 1	555,426	554,658	768	617,341	684,644	684,644
2	Railway operating expenses	A.R. Sch. 300, line 2	402,137	400,107	2,030	437,355	437,355	437,355
3	Net revenue from ry. operations	A.R. Sch. 300, line 3	153,289	154,551	(1,262)	179,986	247,289	247,289
4	Railway tax accruals	A.R. Sch. 300, line 4	41,462	41,388	74	62,941	98,690	98,690
5	Federal income taxes	A.R. Sch. 350, line 59	403	403	-	11,956	41,083	41,083
6	Railway tax accruals, excluding Federal income taxes	Line 4 minus line 5	41,059	40,985	74	50,985	57,607	57,607
7	Railway operating income	A.R. Sch. 300, line 5	111,827	113,163	(1,336)	117,045	148,599	148,599
	Rents							
8	Total rent income	A.R. Sch. 300, line 12	6,705	6,704	1	6,704	6,704	6,704
9	Total rents payable	A.R. Sch. 300, line 19	78,301	78,300	1	78,300	78,300	78,300
10	Net rents, credit (debit)	Line 8 minus line 9	(71,596)	(71,596)	-	(71,596)	(71,596)	(71,596)
11	Net railway operating income	A.R. Sch. 300, line 21	40,231	41,567	(1,336)	45,449	77,003	77,003
12	Total operating expenses, rents and taxes, excluding Federal income taxes	Lines 2, 6, 10	514,792	512,688	2,104	559,936	666,558	666,558
	Other income and miscellaneous deductions from income							
13	Total other income	A.R. Sch. 300, line 33	15,046	15,046	xxxx	15,046	15,046	15,046
14	Total misc. deductions	A.R. Sch. 300, line 43	7,660	7,660	xxxx	7,660	7,660	7,660
15	Net, other income and deductions, credit (debit)	Line 13 minus line 14	7,386	7,386	xxxx	7,386	7,386	7,386
16	Income available for fixed charges	A.R. Sch. 300, line 44	47,617	48,953	xxxx	52,835	84,389	84,389
	Fixed charges and contingent interest							
17	Total fixed charges	A.R. Sch. 300, line 50	23,230	23,230	xxxx	23,230	23,230	23,230
18	Income after fixed charges	A.R. Sch. 300, line 51	24,387	25,723	xxxx	29,605	61,159	61,159
19	Contingent interest	A.R. Sch. 300, line 52	746	746	xxxx	746	746	746
20	Ordinary income	A.R. Sch. 300, line 53	23,641	24,977	xxxx	28,859	60,413	60,413
21	Total extraordinary and prior period items, credit (debit)	A.R. Sch. 300, line 57	8,164	8,164	xxxx	xxxx	xxxx	xxxx
22	Net income transferred to retained income-unappropriated	A.R. Sch. 300, line 58	31,805	33,141	xxxx	28,859	60,413	60,413

a - Not a forecast. Represents 12 months' operation at present rate and cost levels.
b - Includes effects of increased revenues on maintenance, service or capital programs.
c - Level of revenues and earnings required "to insure financial stability and the capacity to render service."

The Baltimore and Ohio Railroad Company

10 Percent Case

Explanation of Data in Schedule B
for the Pro Forma Year

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1. *Pro forma railway operating revenues:*

Column (d) operating revenues represent revenues at 1973 traffic levels increased to include the estimated annual effect of presently existing rate levels.

Columns (e) and (f) operating revenues represent column (d) revenues increased by the estimated annual effect on all traffic of the additional one percent increase still pending in Ex Parte 303 along with the proposed 10 percent increase.

2. *Pro forma railway operating expenses:*

Columns (d), (e) and (f) operating expenses represent actual operating expenses for the year 1973 adjusted to include the following estimated increases in expense levels:

1) Higher cost of diesel fuel and other purchased materials based on recent price experience.

2) Contracted wage rate increases which became effective April 1, 1973 and January 1, 1974, less the effect of an expected lower level of employment.

3) Higher pension costs.

4) Presently planned increases in roadway and equipment maintenance programs, plus additional installation of new rail and ties, based on the assumption that the additional quantities of materials could be obtained from supply sources.

3. *Pro forma railway tax accruals, excluding Federal income taxes:*

Column (d) railway tax accruals represent actual taxes for the year 1973 adjusted to include the annual effect of changes in retirement taxes which occurred on

October 1, 1973 and January 1, 1974, less the effect of an expected lower level of employment.

Columns (e) and (f) railway tax accruals represent column (d) taxes adjusted to include an increase in state and local taxes expected to arise from a higher level of income.

4. *Pro forma Federal income taxes:*

Columns (d), (e) and (f) Federal income taxes have been calculated on a separate company basis, as opposed to a C&O/B&O consolidated basis actually used in 1973, using the statutory Federal income tax rate of 48 percent.

Baltimore, Maryland
April 16, 1974

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
THE BALTIMORE AND OHIO RAILROAD COMPANY

VERIFICATION

STATE OF MARYLAND)
) ss:
CITY OF BALTIMORE)

The financial and income statement data entered on Schedules A and B attached hereto along with accompanying explanations are correct to the best of my knowledge, information and belief.

/s/ B. G. Lawler
B. G. LAWLER

Comptroller
Title

The Baltimore and Ohio Railroad Company
Company

Subscribed and sworn to before me this 16 day of April, 1974.

/s/ Charles J. Weidman
CHARLES J. WEIDMAN
Notary Public

My Commission Expires:
July 1, 1974.

C&O - 1

Railroad The Chesapeake and Ohio Railway Company

SCHEDULE A

Financial Data

10 Percent Case

Line No.	Item	Source (References are to 1973 Annual Report Form R-1. Sources of corresponding items in other years may differ).	Calendar year 1971 (thousands)	Calendar year 1972 (thousands)	Calendar year 1973 (thousands)
			(a)	(b)	(c)
1	Ordinary income	A.B. Sch. 300, line 53, col. (b	24,741	41,758	39,392
2	Net income	A.B. Sch. 300, line 58, col. (b	12,986	32,869	39,392
3	Depreciation and retirements-road	A.B. Sch. 320, line 47 + line 5 col. (b)	7,043	6,234	7,596
4	Depreciation and retirements-equipment	A.B. Sch. 320, line 68 + line 1 + line 82 col. (b)	24,723	25,015	24,702
5	Long-term debt due within one year	A.B. Sch. 200b, line 60, col. (b)	35,561	61,176	31,194
6	Income available for fixed charges	A.B. Sch. 300, line 44, col. (b	46,335	62,385	58,942
7	Fixed and contingent charges	A.B. Sch. 300, line 50 + line 2, col. (b)	21,594	20,522	19,550
8	Railway operating expenses	A.B. Sch. 300, line 2, col. (b	367,166	343,949	377,580
9	Taxes other than Federal income	A.B. Sch. 350, line 64 - line 9, col. (b)	34,650	35,100	41,697
10	Net equipment rents, credit (debit)	A.B. Sch. 300, line 6 through line 13 col. (b)	17,676	11,253	9,681
11	Net joint facility rents, cr. (dr.)	A.B. Sch. 300, line 11 - line 3, col. (b)	3,281	2,022	2,389
12	Railway operating revenues	A.B. Sch. 300, line 1, col. (b)	455,202	451,330	490,062
13	Net railway operating income	A.B. Sch. 300, line 21, col. (b	37,795	52,412	48,233
14	Net investment in railroad property 3/	A.B. Sch. 200a, line 1 + line 1, col. (b), plus Sch. 211B - 1, line 39, col. (d) -col. (e) 4/	920,062	899,031	864,260
15	Shareholders' equity 2/	A.B. Sch. 200b, line 90 2/	628,558	625,463	618,872
16	Dividends paid 2/	A.B. Sch. 308 b	26,049	25,998	59,435
17	Total current assets	A.B. Sch. 200A, line 14, col. (b)	165,287	167,635	183,385
18	Total current liabilities	A.B. Sch. 200b, line 59, col. (b)	141,702	133,871	135,352
19	Working capital ratio 5/	Line 17 ÷ line 18	1.17	1.25	1.35
20	Dividend pay-out ratio	Line 16 ÷ line 1	105.39%	62.26%	150.88%
21	Rate of return on net investment in railroad property (percent)	Line 13 ÷ line 14 x 100	4.11%	5.83%	5.58%
22	Rate of return on shareholders' equity (percent)	Line 1 ÷ line 15 x 100	5.94%	6.68%	6.37%
23	Cash flow/current long-term debt coverage (times)	Line 1 + line 3 + line 4 ÷ line5	1.59	1.19	2.30
24	Fixed and contingent charge coverage (times)	Line 6 ÷ line 7	2.15	3.02	3.01
25	Ratio operating expenses plus net equipment rents to operating revenue (%)	Line 8 + line 10 ÷ line 12 x 10	84.54%	78.70%	79.02%
26	Ratio operating expenses, plus taxes other than Federal income, plus net rents to operating revenue (percent).	Line 8 + line 9 + line 10 + lin 11 + line	92.86%	86.93%	88.02%

Note Calculate all ratios and percentages to two decimal places.

1/ - Show average beginning and end of year.
2/ - Show cash dividends only, listing non-cash dividends in footnote.
3/ - Working capital ratio including material and supplies and not including maturing debt.

C&O - 2

SCHEDULE B

Income Statement Data

(Actual, Present, and Constructed)

Railroad The Chesapeake and Ohio Railway Company

(All amounts shown in thousands)

10 Percent Case

Line No.	Item	Source (For 1973 data)	Calendar year 1973-actual			Present pro forma year-freight service a		Restated pro forma year based on constructed revenue need-freight service c
			Total all services	Total freight service	Total passenger service	Based on present cost and rate levels	Based on present cost levels and proposed rates b	
			(a)	(b)	(c)	(d)	(e)	(f)
1	Railway operating revenues	A.R. Sch. 300, line 1	490,062	487,870	2,192	543,181	602,352	602,352
2	Railway operating expenses	A.R. Sch. 300, line 2	377,580	375,931	1,649	413,972	413,972	413,972
3	Net revenue from ry. operations	A.R. Sch. 300, line 3	112,482	111,939	543	129,209	188,380	188,380
4	Railway tax accruals	A.R. Sch. 300, line 4	52,179	52,130	49	74,633	105,671	105,671
5	Federal income taxes	A.R. Sch. 350, line 59	10,482	10,482	-	22,185	48,155	48,155
6	Railway tax accruals, excluding Federal income taxes	Line 4 minus line 5	41,697	41,648	49	52,448	57,516	57,516
7	Railway operating income	A.R. Sch. 300, line 5	66,303	59,809	494	54,576	82,709	82,709
	Rents							
8	Total rent income	A.R. Sch. 300, line 12	8,575	8,575	-	8,575	8,575	8,575
9	Total rents payable	A.R. Sch. 300, line 19	20,645	20,722	(77)	20,722	20,722	20,722
10	Net rents, credit (debit)	Line 8 minus line 9	(12,070)	(12,147)	77	(12,147)	(12,147)	(12,147)
11	Net railway operating income	A.R. Sch. 300, line 21	48,233	47,662	571	42,429	70,562	70,562
12	Total operating expenses, rents and taxes, excluding Federal income taxes	Lines 2, 6, 10	431,347	429,726	1,621	478,567	483,635	483,635
	Other income and miscellaneous deductions from income							
13	Total other income	A.R. Sch. 300, line 33	15,183	15,183	****	15,183	15,183	15,183
14	Total misc. deductions	A.R. Sch. 300, line 43	4,474	4,474	****	4,474	4,474	4,474
15	Net, other income and deductions, credit (debit)	Line 13 minus line 14	10,709	10,709	****	10,709	10,709	10,709
16	Income available for fixed charges	A.R. Sch. 300, line 44	58,942	58,371	****	53,138	81,271	81,271
	Fixed charges and contingent interest							
17	Total fixed charges	A.R. Sch. 300, line 50	19,550	19,550	****	22,744	22,744	22,744
18	Income after fixed charges	A.R. Sch. 300, line 51	39,392	38,821	****	30,394	58,527	58,527
19	Contingent interest	A.R. Sch. 300, line 52	-	-	****	-	-	-
20	Ordinary income	A.R. Sch. 300, line 53	39,392	38,821	****	30,394	58,527	58,527
21	Total extraordinary and prior period items, credit (debit)	A.R. Sch. 300, line 57	-	-	****	****	****	****
22	Net income transferred to retained income-unappropriated	A.R. Sch. 300, line 58	39,392	38,821	****	30,394	58,527	58,527

a - Not a forecast. Represents 12 months' operation at present rate and cost levels.

b - Includes effects of increased revenues on maintenance, service or capital programs.

c - Level of revenues and earnings required "to insure financial stability and the capacity to render service."

BEST COPY AVAILABLE

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

10 Percent Case

Explanation of Data in Schedule B for the Pro Forma Year

1. *Pro forma railway operating revenues:*

Column (d) operating revenues represent revenues at 1973 traffic levels increased to include the estimated annual effect of presently existing rate levels.

Columns (e) and (f) operating revenues represent column (d) revenues increased by the estimated annual effect on all traffic of the additional one percent increase still pending in Ex Parte 303 along with the proposed 10 percent increase.

2. *Pro forma railway operating expenses:*

Columns (d), (e) and (f) operating expenses represent actual operating expenses for the year 1973 adjusted to include the following estimated increases in expense levels:

1) Higher cost of diesel fuel and other purchased materials based on recent price experience.

2) Contracted wage rate increases which became effective April 1, 1973 and January 1, 1974, less the effect of an expected lower level of employment.

3) Higher pension costs.

4) Presently planned increases in roadway and equipment maintenance programs, plus additional installation of new rail and ties, based on the assumption that the additional quantities of materials could be obtained from supply sources.

5) Additional annual depreciation on equipment already authorized for acquisition.

3. *Pro forma railway tax accruals, excluding Federal income taxes:*

Column (d) railway tax accruals represent actual taxes for the year 1973 adjusted to include the annual effect of changes in retirement taxes which occurred on October 1, 1973 and January 1, 1974, less the effect of an expected lower level of employment.

Columns (e) and (f) railway tax accruals represent column (d) taxes adjusted to include an increase in state and local taxes expected to arise from a higher level of income.

4. *Pro forma fixed charges:*

Columns (d), (e) and (f) fixed charges represent actual fixed charges for the year 1973 adjusted for the following estimated increases:

1) Higher level of interest expense on certain existing bank loans.

2) Additional average annual interest expense expected to be incurred on debt financing of equipment acquisition referred to in item (5) under railway operating expenses.

5. *Pro forma Federal income taxes:*

Columns (d), (e) and (f) Federal income taxes have been calculated on a separate company basis, as opposed to a C&O/B&O consolidated basis actually used in 1973, using the statutory Federal income tax rate of 48 percent.

Baltimore, Maryland
April 16, 1974

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY
THE BALTIMORE AND OHIO
RAILROAD COMPANY

VERIFICATION

STATE OF MARYLAND)
) ss:
CITY OF BALTIMORE)

The financial and income statement data entered on Schedule A and B attached hereto along with accompanying explanations are correct to the best of my knowledge, information and belief.

/s/ B. G. Lawler
B. G. LAWLER

Comptroller
Title

The Chesapeake and Ohio
Railway Company
Company

Subscribed and sworn to before me
this 16 day of April, 1974.

/s/ Charles J. Weidman
Notary Public

My Commission Expires:
July 1, 1974

10 Percent Case

SCHEDULE A

Financial Data

Railroad Western Maryland Railway Company

Line No.	Item	Source (References are to 1973 Annual Report Form R-1. Sources of corresponding items in other years may differ).	Calendar year 1971 (thousands)	Calendar year 1972 (thousands)	Calendar year 1973 (thousands)
			(a)	(b)	(c)
1	Ordinary income	A.R. Sch. 300, line 53, col. (f)	(3,312)	730	3,342
2	Net income	A.R. Sch. 300, line 58, col. (f)	(3,312)	(630)	3,342
3	Depreciation and retirements-road	A.R. Sch. 320, line 47 + line 61 col. (b)	1,096	898	813
4	Depreciation and retirements-equipment	A.R. Sch. 320, line 68 + line [illegible] + line 82 col. (b)	3,620	3,561	3,417
5	Long-term debt due within one year	A.R. Sch. 200L, line 60, col. (j)	4,603	4,334	3,775
6	Income available for fixed charges	A.R. Sch. 300, line 44, col. (f)	1,385	5,315	7,612
7	Fixed and contingent charges	A.R. Sch. 300, line 50 + line [illegible], col. (b)	4,697	4,585	4,270
8	Railway operating expenses	A.R. Sch. 300, line 2, col. (f)	45,162	42,033	43,277
9	Taxes other than Federal income	A.R. Sch. 350, line 64 - line [illegible], col. (b)	4,619	4,217	4,944
10	Net equipment rents, credit (debit)	A.R. Sch. 300, line 6 through 10 - line 13 through 17, col. (b)	318	(1,480)	(1,318)
11	Net joint facility rents, cr (dr)	A.R. Sch. 300, line 11 - line [illegible], col. (b)	346	304	334
12	Railway operating revenues	A.R. Sch. 300, line 1, col. (b)	50,452	48,880	54,367
13	Net railway operating income	A.R. Sch. 300, line 21, col. (f)	1,351	4,760	6,795
14	Net investment in railroad property a	A.R. Sch. 200A, line 1 + line [illegible], col. (b), plus Sch. 211N - 1, line 39, col. (d) - col. (e) a	155,936	153,505	147,768
15	Shareholders' equity a	A.R. Sch. 200L, line 90 a	94,104	91,276	92,631
16	Dividends paid b	A.R. Sch. 308 b	1,714	-	-
17	Total current assets	A.R. Sch. 200A, line 14, col. 5	14,821	15,569	23,476
18	Total current liabilities	A.R. Sch. 200L, line 59, col. 5	14,081	14,541	17,448
19	Working capital ratio c	Line 17 ÷ line 18	1.05	1.07	1.35
20	Dividend pay-out ratio	Line 16 ÷ line 1	-	-	-
21	Rate of return on net investment in railroad property (percent)	Line 13 ÷ line 14 x 100	.87%	3.10%	4.60%
22	Rate of return on shareholders' equity (percent)	Line 1 ÷ line 15 x 100	-	.80%	3.61%
23	Cash flow/current long-term debt coverage (times)	Line 1 + line 3 + line 4 ÷ line5	.30	1.20	2.01
24	Fixed and contingent charge coverage (times)	Line 6 ÷ line 7	.29	1.16	1.78
25	Ratio operating expenses plus net equipment rents to operating revenue (%)	Line 8 + line 10 ÷ line 12 x 19	90.15%	82.96%	77.18%
26	Ratio operating expenses, plus taxes other than Federal income, plus net rents to operating revenue (percent)	Line 8 + line 9 + line 10 + line 11 ÷ line 12 x 100	99.99%	92.21%	86.89%

a - Show average beginning and end of year.
b - Show cash dividends only, listing non-cash dividends in footnote.
c - Working capital ratio including material and supplies and not including maturing debt.

Note: Calculate all ratios and percentages to two decimal places.

150

SCHEDULE B

Income Statement Data
(Actual, Present, and Constructed)

10 Percent Case

(All amounts shown in thousands)

Railroad Western Maryland Railway Company

Line No.	Item	Source (For 1973 data)	Calendar year 1973-actual			Present pro forma year-freight service a		Restated pro forma year based on constructed revenue need-freight service c
			Total all services	Total freight service	Total passenger service	Based on present cost and rate levels	Based on present cost levels and proposed rates b	
			(a)	(b)	(c)	(d)	(e)	(f)
1	Railway operating revenues	A.R. Sch. 300, line 1	54,367	54,367		60,515	67,068	67,068
2	Railway operating expenses	A.R. Sch. 300, line 2	43,277	43,277		43,759	43,759	43,759
3	Net revenue from ry. operations	A.R. Sch. 300, line 3	11,090	11,090		16,756	23,309	23,309
4	Railway tax accruals	A.R. Sch. 300, line 4	5,279	5,279		9,257	12,632	12,632
5	Federal income taxes	A.R. Sch. 350, line 59	335	335		3,032	5,965	5,965
6	Railway tax accruals, excluding Federal income taxes	Line 4 minus line 5	4,944	4,944		6,225	6,667	6,667
7	Railway operating income	A.R. Sch. 300, line 5	5,811	5,811		7,499	10,677	10,677
	Rents							
8	Total rent income	A.R. Sch. 300, line 12	1,474	1,474		1,474	1,474	1,474
9	Total rents payable	A.R. Sch. 300, line 19	490	490		490	490	490
10	Net rents, credit (debit)	Line 8 minus line 9	984	984		984	984	984
11	Net railway operating income	A.R. Sch. 300, line 21	6,795	6,795		8,483	11,661	11,661
12	Total operating expenses, rents and taxes, excluding Federal income taxes	Lines 2, 6, 10	47,237	47,237		49,000	49,442	49,442
	Other income and miscellaneous deductions from income							
13	Total other income	A.R. Sch. 300, line 33	1,254	1,254	xxxx	1,254	1,254	1,254
14	Total misc. deductions	A.R. Sch. 300, line 43	437	437	xxxx	437	437	437
15	Net, other income and deductions, credit (debit)	Line 13 minus line 14	817	817	xxxx	817	817	817
16	Income available for fixed charges	A.R. Sch. 300, line 44	7,612	7,612	xxxx	9,300	12,478	12,478
	Fixed charges and contingent interest							
17	Total fixed charges	A.R. Sch. 300, line 50	4,270	4,270	xxxx	4,270	4,270	4,270
18	Income after fixed charges	A.R. Sch. 300, line 51	3,342	3,342	xxxx	5,030	8,208	8,208
19	Contingent interest	A.R. Sch. 300, line 52	-	-	xxxx	-	-	-
20	Ordinary income	A.R. Sch. 300, line 53	3,342	3,342	xxxx	5,030	8,208	8,208
21	Total extraordinary and prior period items, credit (debit)	A.R. Sch. 300, line 57	-	-	xxxx	xxxx	xxxx	xxxx
22	Net income transferred to retained income-unappropriated	A.R. Sch. 300, line 58	3,342	3,342	xxxx	5,030	8,208	8,208

a - Not a forecast. Represents 12 months' operation at present rate and cost levels.
b - Includes effects of increased revenues on maintenance, service or capital programs.
c - Level of revenues and earnings required "to insure financial stability and the capacity to render service."

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Western Maryland Railway Company

10 Percent Case

Explanation of Data in Schedule B
for the Pro Forma Year

---

1. *Pro forma railway operating revenues:*

Column (d) operating revenues represent revenues at 1973 traffic levels increased to include the estimated annual effect of presently existing rate levels.

Columns (e) and (f) operating revenues represent column (d) revenues increased by the estimated annual effect on all traffic of the additional one percent increase still pending in Ex Parte 303 along with the proposed 10 percent increase.

2. *Pro forma railway operating expenses:*

Columns (d), (e) and (f) operating expenses represent actual operating expenses for the year 1973 adjusted to include the following estimated increases in expense levels:

(1) Higher cost of diesel fuel and other purchased materials based on recent price experience.

(2) Contracted wage rate increases which became effective April 1, 1973 and January 1, 1974, less the effect of an expected lower level of employment.

3. *Pro forma railway tax accruals, excluding Federal income taxes:*

Column (d) railway tax accruals represent actual taxes for the year 1973 adjusted to include the annual effect of changes in retirement taxes which occurred on October 1, 1973 and January 1, 1974, less the effect of an expected lower level of employment. Column (d) also has been adjusted to include an increase in state and local taxes expected to arise from a higher level of income.

Columns (e) and (f) represent column (d) taxes adjusted further to include an additional increase in state and local taxes stemming from the higher level of income.

4. *Pro forma Federal income taxes:*

Columns (d), (e) and (f) Federal income taxes have been calculated using the statutory Federal income tax rate of 48 percent.

Baltimore, Maryland
April 16, 1974

WESTERN MARYLAND RAILWAY COMPANY

VERIFICATION

STATE OF MARYLAND)
) ss.
CITY OF BALTIMORE)

The financial and income statement data entered on Schedule A and B attached hereto along with accompanying explanations are correct to the best of my knowledge, information and belief.

/s/ T. R. Knight
T. R. KNIGHT

Controller
Title

Western Maryland
Railway Company

Subscribed and sworn to before me
this 16th day of April, 1974.

/s/ Mae E. Armiger
Notary Public

My Commission Expires:

July 1, 1974

Exhibit G
Verified Statement No. 1
Affiant: W. F. BETTS

[Exparte No. 305, Filed April 22, 1974,
Interstate Commerce Commission]

Before The
INTERSTATE COMMERCE COMMISSION

IN SUPPORT OF EASTERN, SOUTHERN AND
WESTERN DISTRICT RAILROADS' PETITION
FOR 10 PERCENT INCREASE IN
FREIGHT RATES AND CHARGES

"ASTRO II"—STUDY OF CAPITAL NEEDS

April 1974

THE "ASTRO II" STUDY

(AAR Staff Studies Group)

The updated Astro study has been conducted in two parts, the first of which is similar to the original Astro projection of capital requirements. The second part of the study uses a computer model to project the financial impact on the railroad industry of various means of financing these capital expenditures.

Capital Requirements

The assumptions used for computing capital requirements differ in a number of respects from those used in the original Astro report. While Astro used equipment lives generally believed to be optimum for the provision of top quality transportation service, Astro II uses equipment lives close to present industry averages. Purchase costs of new and rebuilt equipment have been updated to 1973 levels. No costs were included for betterments to existing equipment. A summary and comparison of assumptions is contained in Table 1.

As would be expected from the more conservative assumptions used, equipment requirements are computed to be slightly lower than the original Astro projections. These revised requirements are shown in Table 2. Given the projected growth in traffic, these requirements represent the minimum equipment needed to maintain service and relieve shortages. Unless there is a dramatic breakthrough in car utilization, a decline in the rate of traffic growth, or an increase in average car age, these purchases must be made.

The deferred track maintenance problem has been divided into two estimates. It was first necessary to estimate the amount by which track maintenance is presently being deferred—the difference between present MW expense rates and "normalized" expense rates. In other words, this is the amount by which present MW expense rates must be increased to prevent further deterioration, but not to "catch up" on past deferrals. This amount to normalize fixed maintenance has been estimated as re-

Table 1

COMPARISON OF ASSUMPTIONS—ASTRO I AND II

Item	Astro I	Astro II
Annual traffic growth	3.5%	3.5%
Equipment cost and life:		
New road freight locomotives	$250,000—15 yrs.	$300,000—18 yrs.
Rebuilt road frt, locomotives	— —	100,000—10 "
New switching locomotives	— —	175,000—23 "
New freight cars)	14,000—18 "	20,000—25 "
Rebuilt freight cars)		10,000—15 "
Betterments	$200,000,000/yr.	Not considered

Equipment additions:

Freight cars

Astro I: 2% growth in fleet size (no. of cars) per year. Improved utilization will make up the difference between 2% and the 3.5% traffic growth rate. Implicit assumption that 24% of installations will be rebuilt cars, approximately 27,000 cars/year.

Astro II: 3.5% annual growth, less 1.25% annual car productivity increase. In addition, 75,000 cars are purchased during the first 60 months to relieve shortages. 5,000 cars rebuilt per year.

Locomotives

Astro I: 3 new will replace 4 old

Astro II: 3 new will replace 4 old *road* locomotives
10 new will replace 11 old *switching* locomotives

Table 2

PROJECTED REQUIREMENTS—10 YEARS

Item	Astro I	Astro II
Years covered	1970-79	1974-83
Freight cars:		
New	847,367	936,914
Rebuilt	267,589	50,000
Total	1,114,956	986,914
Locomotives:		
New—road		14,005
New—switching		4,273
Rebuilt—road		1,500
Total	19,943	19,778

quiring an increase of $200 million per year in industry MW expense.

In addition, there exists a maintenance backlog throughout much of the railroad industry, requiring a "catch up" effort above and beyond normalized maintenance. Based on a detailed review of the original Astro analysis, we have estimated the cost of a minimal catch-up effort over a 10-year period to be $3 million, or $300 million per year. We have further estimated that the improvements in track conditions obtained through this catch-up program will reduce other operating expenses sufficient to provide a 10 percent return (pre-tax) on the capital so invested.[1]

In addition to additional maintenance expenditures, capital expenditures for fixed plant improvements must also be increased. With the U.S. railroad network now handling record tonnages and a 41 percent increase projected for the next decade, improvements in yards, signal and communication systems, intermodal networks, etc. will be required. Each capital investment project must

[1] It should be noted that this return does *not* accrue from the normalized maintenance expense as this expense merely maintains present conditions without improving them.

be individually studied and costed; no two are alike. For this reason, it is not possible to accurately project these requirements on an industry-wide basis. As a modest increase in present fixed plant capital expenditure programs we have projected an increase of $100 million annually, a 27 percent rise.

Comparison or original and updated Astro projections

The 10-year capital needs projections of the original Astro report and Astro II are compared in Table 3. Although catagorized differently, the fixed plant expenditure estimates are comparable in total magnitude, considering the effects of inflation. The equipment estimates, while almost identical in total, are somewhat different in composition. As noted previously, no estimate has been included for betterments to existing equipment in the Astro II projections. The increased equipment lives anticipated by Astro II have reduced the number of units of new equipment required, but inflation has raised the total cost of that equipment above that estimated by the original Astro report.

The Financial Impact

This half of the analysis uses a computer model originally developed by the Southern Pacific called the "Financial Reports Output Generator" (FROG). The model takes as input the projected capital expenditures developed earlier and projected revenue and operating expense data, together with data on existing debt amounts, maturities and interest payment requirements, base year assets and liabilities, projected requirements in net working capital and other data. The model then computes cash generation for the first year, cash requirements, and cash shortfall. Equipment debt is issued to the limit imposed by minimum down payment requirements, and bonds issued to meet any remaining cash shortfall. Additional interest and principal payments are computed for future years and the entire process is repeated for the succeeding year.

The model then prints out projected financial and operating ratios, income statements, balance sheets and cash flow statements.

Table 3

COMPARISON OF ORIGINAL AND UPDATED ASTRO PROJECTIONS

10 Year Capital Needs

(Millions)

Item	Astro I [a]	Astro II [b]
Equipment		
Freight cars:		
New and rebuilt	$15,697	$19,238
Betterments	1,250	—
Locomotives:		
New and rebuilt	5,004	5,099
Betterments	423	—
Total equipment	$22,374	$24,337
Fixed plant		
Rail and tie installations	$ 5,285	—
Road and structures, excl. track	5,550	—
Rail and tie installations, present rate		4,000
Increase in fixed plant mtce.[c]	—	5,000
Fixed plant capital expenditures [c]	—	4,750
Total fixed plant	$10,835	$13,750
Grand total	$33,209	$38,087

[a] Astro report, App. C, Table 1, years 1971-80
[b] Update, 3.5% growth, 0% inflation 1974-83
[c] ICC accounting definition

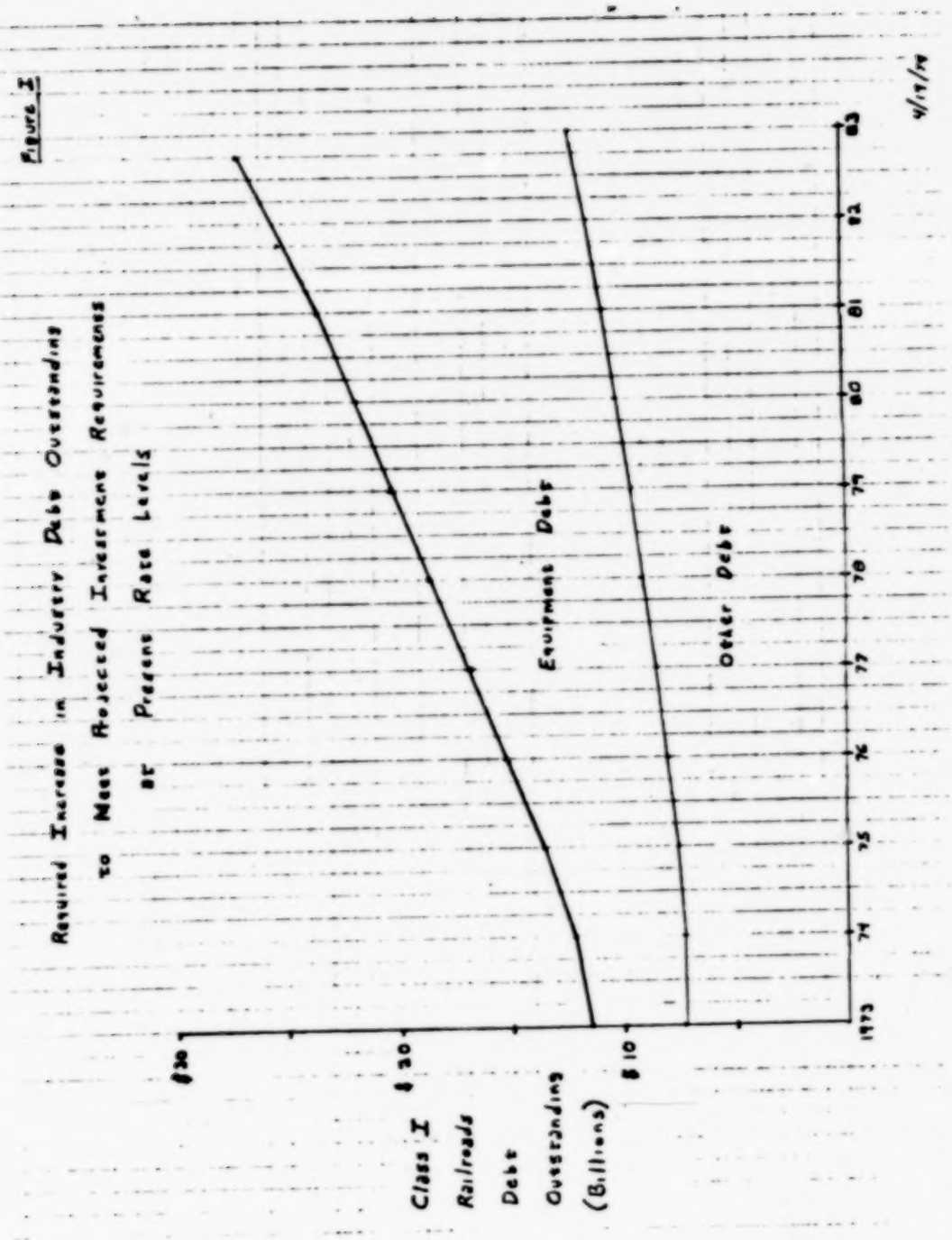
We have assumed that 26 percent of equipment investment would be financed through leasing (approximately the present ratio). The remaining 74 percent would be financed through Equipment Trusts and Conditional Sales Agreements requiring an average 10 percent down payment. No provision was made for advance lease payments. Leases were assumed to be primarily leveraged leases with the investment tax credit retained by the lessor. Interest rates were projected to be 7.75 percent for equipment debt, 8.5 percent for bonded debt, and 6 percent for leases. Terms were 15 years for leases and equipment debt and 30 years for bonds. Inflation was projected to be 5 percent per year, with a 5 percent rate increase at the end of each year. (Since no inflation was projected for the original Astro calculations, Table 3 for "Astro II" are for a no-inflation case also, to facilitate comparison. All other financial projections in this summary include 5 percent inflation).

The resulting financial projections show that fixed charge coverage after taxes would decline precipitously[1] as soon as the programs were begun. Under such foreseeable circumstances no reasonable investor would be willing to lend money to the industry even at usurious interest rates. But even if the required debt capital were available and interest rates remained constant, so much debt capital would be required that the industry's debt to equity ratio would double in 10 years![2] Lower fixed charge coverage ratios and higher debt/equity ratios signify decreased financial stability—an increased likelihood of default in case of a minor downturn in the economy. The increase in total industry debt required under this scenario is shown in Figure I.

It is important to recognize that the industry's financial stability would not be allowed to deteriorate in this manner. Investors will not provide capital unless a nearly certain ability to repay can be demonstrated. Federal loan guarantee proposals also carry this requirement. Clearly such loans would be highly speculative, at best, given present industry income levels. Indeed, it is unlikely that prudent railroad managements would voluntarily incur a debt load they could not safely carry. The required investments would not be made.

[1] From 1.89 to a low of 1.32 in 1978 and 1979.

[2] Debt/equity ratio would rise from 0.72 at the end of 1973 to 1.48 at the end of 1983. (Expressed as a percent of total capital, debt would rise from 42% to 60%.)



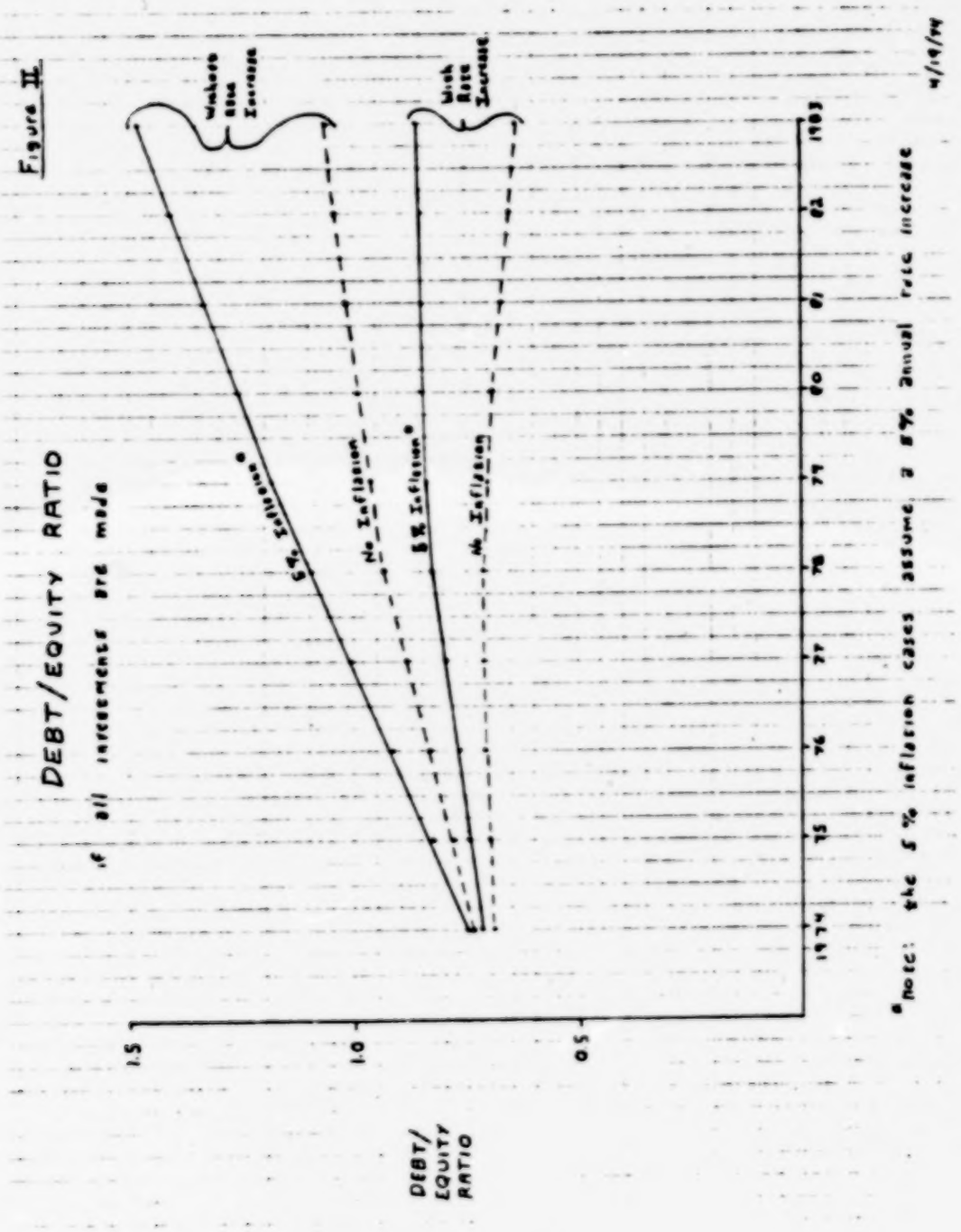
The answer to this problem is greater use of equity capital for financing investments in equipment and fixed plant. With the railroad industry's earnings and dividend record, there is no chance whatever of successfully attracting additional equity capital from investors. This capital must, therefore, come from retention of increased earnings.

A 10 percent increase in freight rates, not to offset inflation-based cost increases but to increase maintenance levels and profitability, would help to provide equity capital. Figure II shows the projected increases in debt to equity ratio for 0 percent and 5 percent inflation, with and without the rate increase.

The Need for Future Rate Increases

If the industry is to continue to be financed by private capital, it must either be allowed to make itself attractive to investors or a means must be found to require those investors to make funds available to railroad companies. The latter is clearly infeasible and undesirable; the former requires the demonstrably improved earnings record made possible by this rate increase. Future increases must be made effective expeditiously, and must cover all cost increases not offset by improved productivity. These projections assume these conditions will be met.

Figure II



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Verified Statement No. 3
Affiant: Burton N. Behling

[Exparte No. 305, Filed April 22, 1974,
Interstate Commerce Commission]

Before the
INTERSTATE COMMERCE COMMISSION

IN SUPPORT OF EASTERN, SOUTHERN AND WESTERN DISTRICT RAILROADS' PETITION FOR 10 PERCENT INCREASE IN FREIGHT RATES AND CHARGES

VERIFIED STATEMENT OF
BURTON N. BEHLING
TRANSPORTATION CONSULTANT

April 22, 1974

My name is Burton N. Behling. I presently am a Transportation Consultant. My current address is 5031 Glenbrook Road, Northwest, Washington, D.C. 20016.

This verified statement is submitted in reference to the petition filed this date by the railroads for authority to increase freight rates and charges generally by 10 percent.

In 1969-1970 I participated actively in the development of the Astro study and report, which had been initiated by the Board of Directors of the Association of American Railroads in September 1969. At that time I was Vice President-Economics and Finance Department, Association of American Railroads, and also served as Economic Consultant to the Astro Committee.

As a participant in the study, I have been asked to submit pertinent excerpts from the Astro Report for the record in this proceeding. That comprehensive study and report demonstrated the compelling need for increased capital and maintenance improvement expenditures (including expanded rail and tie installations over the 11-year period. 1970-1980, as follows:

Proposed Expenditures: 1970-1980

(millions)

	Average 1966-68	1970	1971	1975	1980	Total 1970-80
Freight Cars	$ 894	$1,623	$1,631	$1,690	$1,761	$18,570
Locomotives	226	526	528	541	559	5,953
Rail & Tie Installations	271	528	528	528	528	5,814
Roadway & Structures (except rail and tie installations)	296	500	500	550	600	6,050
Total	$1,687	$3,177	$3,187	$3,309	$3,448	$36,387

As shown, these estimated expenditure needs come to $3.2 billion for 1970 and 1971 and should rise to $3.4 billion by 1980, as compared with an average of only $1.7 billion in the 1966-1968 period. For further details and data for intervening years, see Exhibit A (Excerpts from the Astro Report) accompanying this statement.

It was shown that there was no prospect that the railroad industry could finance expenditures even approaching such magnitude on the basis of its shrunken earnings, limited internal resources, and ability to assume and service expanding debt and fixed charges.

To show how these expenditure needs of the railroad industry were developed, which I regard as reasonable and even conservative, relevant parts of the Astro Report, which are set forth in full in Exhibit A accompanying this statement, are summarized below:

1. *Freight Car Programs Will Cost $18.6 Billion*

In the past 10 years, the number of freight cars owned and leased by Class I railroads declined from 1,676,386 to 1,438,190 cars, a drop of 14.2 percent, despite a 34 percent increase in revenue ton-miles.

This reduction of the railroad car fleet was partially counteracted by other factors, chiefly: an increase of 55,000 cars in the private fleet maintained by shippers and car companies, the acquisition of higher capacity units, heavier loading and improved usage from longer average hauls.

Unfortunately, it is improbable that the railroads can duplicate the gain of 50 percent in freight car utilization during the 1960's. Physical limitations in the capacity of the roadbed, as well as in shipper needs, will preclude substantial increases in the maximum size of new freight cars. There are also practical barriers to increasing the length of existing routes. Moreover, the problem of recurring car shortages, frequently resulting in forfeited traffic, must be alleviated in the future. Even with better utilization, improvements in service and penetration into the shorter distance markets will further limit the car fleet's ability to handle more traffic without additional units.

Even assuming that the railroads could handle an annual 3.5 percent increase in volume with a 2 percent increase in freight cars, the car fleet must be expanded by 24 percent, to 1,788,000 cars by 1980. At an average cost of $14,000 for new and

rebuilt cars, the 11-year freight car program would involve $17.22 billion for 1,230,000 new and rebuilt cars.

Under the proposed acquisition program, the railroads would retire 80,000 freight cars each year compared with an annual retirement rate of 84,195 cars from 1966 through 1968. The present fleet would thus be retired on a reasonable average cycle of 18 years. However, in order to maintain past retirement levels in the face of a much greater demand for transportation, the industry must augment its programs for heavy repairs on freight cars. Annual costs for such betterments must reach $150 million by 1980, or double the average expenditures of 1966-1968. Total costs of this 11-year program would be $1.35 billion.

These estimates assume that the private car fleet will also expand at the rate of 2 percent per year and, with improvements in utilization, will be able to handle its share of traffic growth.

It should be noted that these figures do not include working equipment, such as cabooses and track machinery, which must also be adequate to meet future needs.

2. *Locomotive Programs Will Cost Another $5.95 Billion*

The industry currently uses 25,750 locomotives in freight service. About half these units are over the recommended life span of 15 years.

To meet the projected traffic increases and to restore a reasonable average age to the power fleet would require annual installation of more than 2,600 locomotives of current capacity. However, many of the new units should have greater capacity than those they replace, although there will still be a requirement for medium power units for switching, branch line and "mini-train" services. On the assumption that three new units would replace four old ones, and that the average cost per new locomotive would be $250,000, the annual costs of the locomotive program would begin at $491 million in 1970 and move to $509 million by 1980. The program would result in the acquisition of nearly 22,000 new, greater capacity locomotives.

To keep pace with the proposed retirement levels and provide improved service, heavy repair programs for locomotives must be increased substantially. Betterments should reach $50 million per year by 1980.

Total requirements for augmenting motive power over the 11 years are $5,953 million.

3. *Rail and Tie Installations Will Require $5.8 Billion*

As traffic moves in greater volumes, increasing wear and tear on the roadbed must be taken into account. In recent years, larger freight cars carrying heavier loads have placed greater stress on the track. Movement of such traffic over many lines is already restricted.

The low rate of rail and tie insertions in the past aggravates the problem of meeting future needs. From 1959 through 1968, the largest amount of new rail laid in any one year was equal to annual replacement on a 120-year life cycle; the worst year resulted in an indicated life of more than 250 years. According to current estimates, new rail can reasonably be expected to last an average of 60 years, including subsequent reuse in secondary lines. This standard will increase future new rail installations to nearly three times the level of the past decade.

At the same time, insertions of re-laid rail should be 37 percent greater than the average in recent years.

This schedule of new and re-laid rail placements will cost approximately $332 million per year at present prices.

For new cross ties, the average life is approximately 35 years. To meet this standard will require about a 50-percent increase over the industry's performance from 1959 to 1968. Annual costs for the proposed program approximate $197 million per year.

4. *Capital Expenditures for Other Roadway Needs and Structures Will Require Over $6 Billion*

The magnitude of roadway improvements required in the next decade will be a drastic change from the past. Not only is there a substantial backlog to be made up, but tomorrow's traffic growth will have to be provided for at the same time.

Two priority targets of this beefed-up program should be to increase the efficiency of the freight car fleet and to improve the reliability and quality of service. The types of projects that must be undertaken are not new, but they can no longer be conducted on a starvation diet without risking major service deterioration and further hikes in operating costs. Yard operations must be modernized. Attention must be given to reducing terminal and interline delays. Communications and computer facilities must be expanded and more intermodal transfer facilities must be built. More money must also be spent on ballast and resurfacing the roadbed in conjunction with rail renewals.

Capital budgets for this type of project have improved somewhat in most recent years, but they still remain at substandard levels. Excluding expenditures for rail and tie replacements, these programs have been averaging less than $300 million annually. As a bare minimum, an additional $200 million should be invested immediately. Annual outlays should be increased to $550 million by 1974 and again to $600 million by 1977.

The full impact of the capital needs (including expanded rail and tie programs) for the 1970-1980 period, as outlined above, was further emphasized by considering the cash flow that would be required to fund such needs. As the following excerpts from the Astro Report demonstrate, under conditions existing in the industry those capital needs could not be funded, even with heavy borrowing:

> Cash flow generated from operations is utterly inadequate to fund the expansion of the equipment

> fleet, much less any additional improvements in fixed plant. Moreover, an estimated $1.5 billion of existing bonded and similar long-term debt will mature by 1980 [exclusive of contingent liabilities as guarantor or surety of obligations of affiliated companies or lessors]. Even if mortgage bonds can be refinanced under conventional terms, the interest rates may well double those now being paid.
>
> The future costs of financing the necessary equipment and plant programs have been projected on the assumptions that (1) roadway improvements, equipment betterments, and rail and tie installations would be paid for by internally generated funds; (2) maturing bonded debt could be refinanced; (3) 80 percent of the equipment would be purchased via conditional sales or deferred payment plans, with the remaining 20 percent secured under conventional equipment trust agreements; and (4) interest rates would be slightly less than those which exist today. Initial cash requirements have been reduced to the lowest practicable level by minimizing down payments and resorting to long-term financing wherever feasible.
>
> The capital improvements program for equipment covers only freight cars and locomotives, which have comprised about 94 percent of the equipment purchases in recent years. Private capital funds for elimination and protection of grade crossings are excluded for the reason that these must be financed from public funds as recommended below.
>
> Compared with 1966-1968, the proposed modernization programs dictate a 92 percent increase in cash requirements by 1975 and a 139 percent addition by 1980. Existing long-term debt would rise to $20.5 billion by 1980—twice today's debt. Issuances of equipment obligations in the first year alone would be $1.9 billion, nearly double the largest annual amount ever incurred by the industry.

Cash Requirements, Including Interest Charges, For Capital Programs and Rail and Tie Installations
(millions)

	Average 1966-68	1970	1971	1975	1980
Equipment Payments: Cash outlays, debt retirement and down payments	$ 874.9	$ 765.5	$ 874.7	$1,313.9	$1,746.7
Interest Payments—for Equipment Obligations	189.3	279.2	418.7	882.0	1,256.5
Interest Payments—on Present Non-Equipment Long-Term Debt	238.0	252.8	266.4	287.6	308.5
Rail & Tie Installations	271.4	528.5	528.5	528.5	528.5
Capital Expenditures for Roadway and Structures (excl. rail & tie installations)	296.3	500.0	500.0	550.0	600.0
Total	$1,859.9	$2,326.0	$2,588.3	$3,562.0	$4,440.2

[Note: Further explanation of these amounts and data for intervening years are given in Exhibit A accompanying this statement.]

These essential cash requirements represent massive increases over the 1966-1968 period. By 1980, equipment payments would double, from $874.9 million to $1,746.7 million. Interest payments on equipment debt would rise 600 percent, from $179.3 million to $1,256.5 million. Improvements in plant and related facilities would require $600 million by 1980 —double the level of 1966-1968. The costs of rail and tie installations would rise almost 100 percent. Even the smallest increase, a 30 percent rise in carrying charges on other long-haul debt, represents $70.5 million in added costs.

The foregoing shows how dramatic must be the change from present conditions if the mammouth capital programs urgently required are to be launched. Moreover, these estimates are based on

today's prices and therefore contain no adjustment for such elements as wage rates and the costs of materials, which have been in a constant upward spiral. Nor do they include increases in operating expenses which will result from traffic growth.

Present earnings are not only insufficient to cover the costs of added inflation, they are totally inadequate to sustain needed investment for the future even with massive borrowings.

VERIFICATION

DISTRICT OF COLUMBIA)
) ss.
CITY OF WASHINGTON)

Burton N. Behling, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

/s/ Burton N. Behling
BURTON N. BEHLING

Subscribed and sworn to before me this 18th day of April 1974:

/s/ Ellen M. Herlihy
Notary Public of the District of Columbia.

My Commission expires on February 29, 1972.

EXHIBIT A
Accompanying
Verified Statement No. 3
Affiant: Burton N. Behling

Before The

INTERSTATE COMMERCE COMMISSION

IN SUPPORT OF EASTERN, SOUTHERN AND WESTERN DISTRICT RAILROADS' PETITION FOR 10 PERCENT INCREASE IN FREIGHT RATES AND CHARGES

Excerpts from:

THE AMERICAN RAILROAD INDUSTRY:
A Prospectus (June 30, 1970)

The Report Of:

America's
Sound
Transportation
Review
Organization

April 22, 1974

the american railroad industry:

a prospectus

AMERICA'S SOUND TRANSPORTATION REVIEW ORGANIZATION
1920 L STREET, N.W., WASHINGTON, D. C. 20036
JUNE 30, 1970

George A. Smathers
General Counsel

Robert W. Blanchette
Executive Director

Burton N. Behling
Economic Consultant

Richard E. Briggs
Senior Policy Analyst

III

THE PUBLIC INTEREST REQUIRES THAT TOMORROW'S RAILROADS BE VASTLY IMPROVED

The public's needs for efficient rail service during the Seventies will require a massive investment for modernization and expansion of capacity. Not only will present facilities have to be replaced as they are retired, but provision must be made to serve growing needs, to improve present service and to catch up for subnormal past expenditures.[1]

While the future volume of railroad freight traffic cannot be predicted with exact precision, reasonable statistical projections point to a much greater need for rail service.

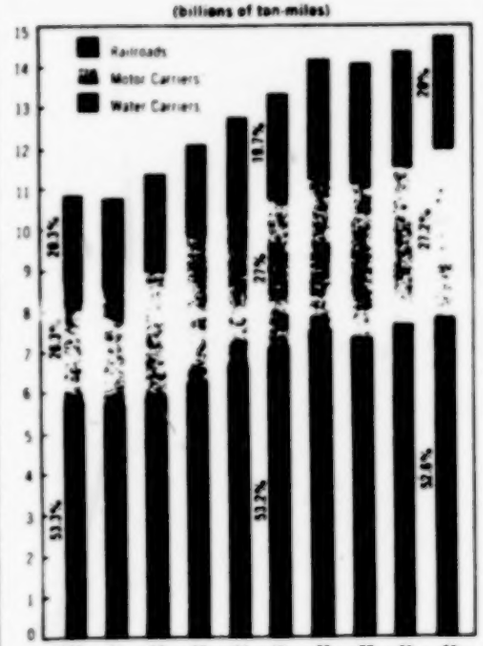
Despite their financial problems, railroads are continuing to grow with the economy. Between 1961 and 1969, the gross national product, in constant dollars, increased at an average annual rate of 4.9 percent.[2] Intercity ton-miles grew at an annual rate of 4.8 percent and the average growth rate for railroad traffic was 4 percent.[3]

In recent years, railroads have managed to maintain a stable share of domestic freight traffic handled by rail, motor, air and water carriers. Excluding the specialized commodity movement of oil in pipelines, the railroad portion of intercity ton-miles in the past decade has held at between 52 and 53 percent.[4]

From these indications, it is reasonable to assume that the railroads can maintain their present share of the total market. On this basis, if the national economy produces a 3.5 percent annual increase in traffic demand, the railroads would have 46 percent more traffic in 1980 than they had in 1969.[5] Even the more conservative estimates premised on a declining share of the market for railroads indicate that the 1980 rail volume would be 34 percent greater than it was in 1969.[6]

To move this added traffic in a competitive world, the railroads must not only expand capacity but improve service. Poor on-time performance, slow schedules, shortages of freight cars and high loss and damage claims are not characteristic of all roads.[7] Yet the mounting frequency of shippers' complaints testifies to the severity of these problems. Although traffic gains will be impeded without improved rail service, it must be remembered that basic improvements depend on financial circumstances. High quality service and impoverished railroads are not natural companions.

INTERCITY FREIGHT TRAFFIC IN THE UNITED STATES
(Excluding Oil Pipelines)
1960 - 1969
(billions of ton-miles)



Volume of freight traffic handled by air carrier rose from 3% to 3% from 1960 to 1969.

SOURCE: Transportation Association of America

As present facilities are being upgraded, the railroads should also strive to penetrate new markets by offering new concepts in rail service. There has been substantial innovation in the movement of bulk commodities through the introduction of jumbo cars and unit trains.[8] But the road to success should not be merely confined to moving high volumes of low value commodities over long distances. The eightfold increase in piggyback traffic since 1955 is a vivid example of potential that can be tapped.[9] And as highway congestion increases, there are growing indications that railroads can regain some of the traffic movements once assumed to have been permanently lost to trucks.[10] However, new ideas cannot be implemented without a further investment in equipment and facilities.

The difficulty in meeting these needs can be traced directly to more than a decade of inadequate earnings which have forced major cutbacks in capital spending and maintenance programs. Not only must attention be given to the industry's freight car fleets, but locomotive power must be considerably increased; approximately one-half the locomotives are already beyond their normal life expectancy.[11]

The most serious underinvestment has been in basic roadway and structures. Programs to improve plant have fared poorly in competing for limited railroad capital. They often lack the immediate and visible effect on revenues that accompany equipment purchases. They are more difficult to finance because the property to be improved is usually already encumbered by existing mortgages. As a result, annual capital expenditures for roadway and structures have averaged less than 2 percent of the net investment in those facilities during the past ten years.[12] Despite inflation, spending remains at the same level as twenty years ago. Today, only 8 percent of the trackage is welded rail and the preponderance of main line still has its original profile.[13]

The shortage of cash has not only affected capital programs; maintenance levels have also had to be curtailed in many instances. Since 1957, replacement of rail and cross ties has been sharply reduced despite traffic gains.[14] For most carriers, existing equipment rehabilitation programs must be greatly expanded.

The capital and maintenance programs recommended in this report are based on the conservative assumptions that the economy will expand at a moderate rate and that the railroads' share of the intercity traffic will remain constant. It must be emphasized that the programs described below are estimates of what *should* be done, rather than projections of what railroads *can* accomplish in their present context of falling earnings and capital shortages.

A. To Meet the Expanded Demand for Transportation in the Coming Decade, the Railroads Must Make New Expenditures for Plant and Equipment Far in Excess of Past and Present Levels

Since World War II, the railroad industry has averaged $1.15 billion in annual capital outlays, for a total investment of $27.7 billion during this 24-year period.[15] But even this level must be dramatically increased in the future.

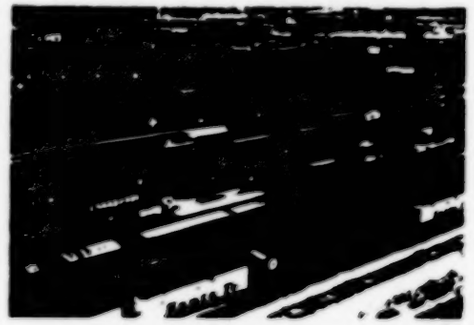
Requirements for expansion and modernization of the equipment fleet and fixed plant are estimated at $3.2 billion in 1970 with increases to $3.4 billion by 1980

at today's prices.[16] This compares with average annual outlays of only $1.7 billion from 1960 through 1968.[17]

Proposed Expenditures: 1970-1980
(millions)

	Average 1966-68	1970	1975	1980	TOTAL 1970-80
Freight Cars	$ 894	$1,623	$1,690	$1,761	$16,570
Locomotives	226	926	941	959	5,953
Rail and Tie Installations	271	928	928	928	5,814
Roadway and Structures (except rail and tie installations)	296	900	550	600	6,050
TOTAL	$1,687	$3,177	$3,309	$3,448	$34,387

The total for the 1970-1980 period greatly exceeds the entire net investment in the railroad industry today.[18] Indeed, it is nearly equivalent to the entire gross investment, before depreciation, of the industry in road and equipment, much of which took over a century to build.[19]



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1. Freight Car Programs Will Cost $18.6 Billion

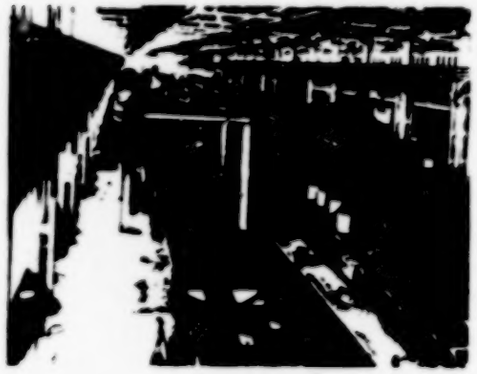
In the past ten years, the number of freight cars owned and leased by Class I railroads declined from 1,676,386 to 1,438,190 cars, a drop of 14.2 percent, despite a 34 percent increase in revenue ton-miles.[20]

This reduction of the railroad car fleet was partially counteracted by other factors, chiefly: an increase of 85,000 cars in the private fleet maintained by shippers and car companies, the acquisition of higher capacity units, heavier loadings and improved usage from longer average hauls.[21]

Unfortunately, it is improbable that the railroads can duplicate the gain of 50 percent in freight car utilization during the 1960's.[22] Physical limitations in the capacity of the roadbed, as well as in shipper needs, will preclude substantial increases in the maximum size of new freight cars. There are also practical barriers to increasing the length of existing routes. Moreover, the problem of recurring car shortages, frequently resulting in forfeited traffic, must be alleviated in the future.[23] Even with better utilization, improvements in service and penetration into the shorter distance markets will further limit the car fleet's ability to handle more traffic without additional units.

Even assuming that the railroads could handle an annual 3.5 percent increase in volume with a 2 percent increase in freight cars, the car fleet must be expanded by 24 percent, to 1,788,000 cars by 1980.[24] At an average cost of $14,000 for new and rebuilt cars, the eleven-year freight car program would involve $17.22 billion for 1,230,000 new and rebuilt cars.[25]

Under the proposed acquisition program, the railroads would retire 80,000 freight cars each year compared with an annual retirement rate of 84,195 cars from 1966 through 1968.[26] The present fleet would thus be retired on a reasonable average cycle of 18 years. However, in order to maintain past retirement levels in the face of a much greater demand for transportation, the industry must augment its programs for heavy repairs on freight cars. Annual costs for such betterments must reach $150 million by 1980, or double the average expenditures of 1966-1968.[27] Total costs of this 11 year program would be $1.35 billion.[28]



These estimates assume that the private car fleet will also expand at the rate of 2 percent per year and, with improvements in utilization, will be able to handle its share of traffic growth.[29]

It should be noted that these figures do not include working equipment, such as cabooses and track machinery, which must also be adequate to meet future needs.

2. Locomotive Programs Will Cost Another $5.95 Billion

The industry currently uses 25,750 locomotives in freight service.[30] About half these units are over the recommended life span of 15 years.[31]

To meet the projected traffic increases and to restore a reasonable average age to the power fleet would require annual installation of more than 2,600 locomotives of current capacity.[32] However, many of the new units should have greater capacity than those they replace, although there will still be a requirement for medium power units for switching, branch line and "mini-train" services. On the assumption that three new units would replace four old ones, and that the average cost per new locomotive would be $250,000, the annual costs of the locomotive program would begin at $491 million in 1970 and move to $509 million by 1980.[33] The program would result in the acquisition of nearly 22,000 new, greater capacity locomotives.[34]

To keep pace with the proposed retirement levels and provide improved service, heavy repair programs for locomotives must be increased substantially. Betterments should reach $50 million per year by 1980.[35]

Total requirements for augmenting motive power over the eleven years are $5,953 million.[36]

3. Rail and Tie Installations Will Require $5.8 Billion

As traffic moves in greater volumes, increasing wear and tear on the roadbed must be taken into account.[37] In recent years, larger freight cars carrying heavier loads have placed greater stress on the track.

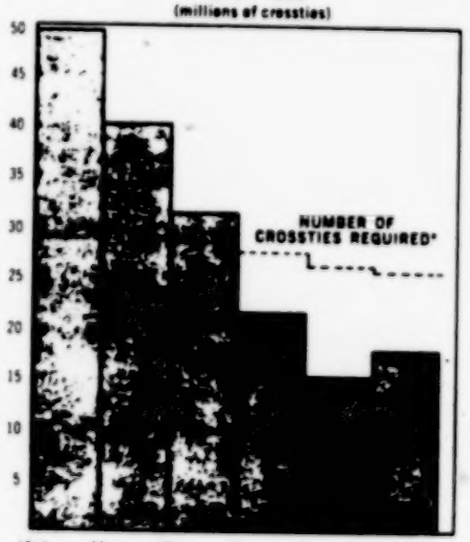
Movement of such traffic over many lines is already restricted.

The low rate of rail and tie insertions in the past aggravates the problem of meeting future needs. From 1959 through 1968, the largest amount of new rail laid in any one year was equal to annual replacement on a 120-year life cycle; the worst year resulted in an indicated life of more than 250 years.[38] According to current estimates, new rail can reasonably be expected to last an average of 60 years, including subsequent reuse in secondary lines.[39] This standard will increase future new rail installations to nearly three times the level of the past decade.[40]

At the same time, insertions of re-laid rail should be 37 percent greater than the average in recent years.[41]

This schedule of new and re-laid rail placements will cost approximately $332 million per year at present prices.[42]

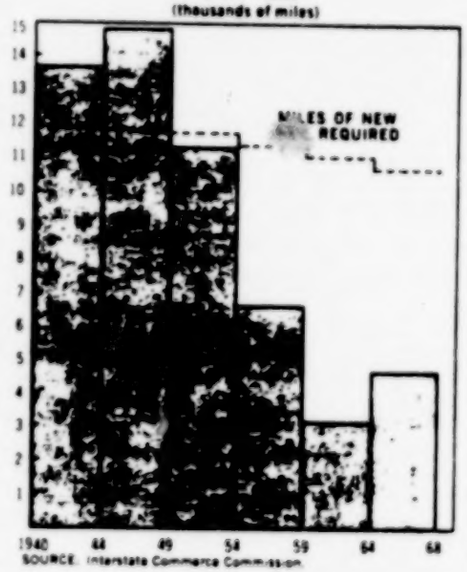
NUMBER OF CROSSTIES INSTALLED
vs.
NORMAL REQUIREMENTS OF
35-YEAR LIFE CYCLE
1940 - 1968
(millions of crossties)



* Excluding switch and bridge ties, comprising 7 percent of total track.

SOURCE: Interstate Commerce Commission.

MILES OF NEW RAIL INSTALLED
vs.
NORMAL REQUIREMENTS OF
60-YEAR LIFE CYCLE
1940 - 1968
(thousands of miles)



SOURCE: Interstate Commerce Commission.

For new cross ties, the average life is approximately 35 years.[43] To meet this standard will require about a 50 percent increase over the industry's performance from 1959 to 1968.[44] Annual costs for the proposed program approximate $197 million per year.[45]

4. Capital Expenditures for Other Roadway Needs and Structures Will Require Over $6 Billion

The magnitude of roadway improvements required in the next decade will be a drastic change from the past. Not only is there a substantial backlog to be made up, but tomorrow's traffic growth will have to be provided for at the same time.

Two priority targets of this beefed up program should be to increase the efficiency of the freight car fleet and to improve the reliability and quality of service. The types of projects that must be undertaken are not new, but they can no longer be conducted on a starvation diet without risking major service deterioration and further hikes in operating costs. Yard opera-

tions must be modernized. Attention must be given to reducing terminal and interline delays. Communications and computer facilities must be expanded and more intermodal transfer facilities must be built. More money must also be spent on ballast and resurfacing the roadbed in conjunction with rail renewals.[46]

Capital budgets for this type of project have improved somewhat in most recent years, but they still remain at substandard levels. Excluding expenditures for rail and tie replacements, these programs have been averaging less than $300 million annually.[47] As a bare minimum, an additional $200 million should be invested immediately. Annual outlays should be increased to $550 million by 1974 and again to $600 million by 1977.[48]

B. Under Present Conditions, Capital Needs Cannot Be Met Even With Heavy Borrowing at Record High Interest Rates

Cash flow generated from operations is utterly inadequate to fund the expansion of the equipment fleet, much less any additional improvements in fixed plant.[49] Moreover, an estimated $1.5 billion of existing bonded and similar long-term debt will mature by 1980.[50] Even if mortgage bonds can be refinanced under conventional terms, the interest rates may well double those now being paid.[51]

The future costs of financing the necessary equipment and plant programs have been projected on the assumptions that (1) roadway improvements, equipment betterments, and rail and tie installations would be paid for by internally generated funds; (2) maturing bonded debt could be refinanced; (3) 80 percent of the equipment would be purchased via conditional sales or deferred payment plans, with the remaining 20 percent secured under conventional equipment trust agreements; and (4) interest rates would be slightly less than those which exist today.[52] Initial cash requirements have been reduced to the lowest practicable level by minimizing down payments and resorting to long-term financing wherever feasible.

The capital improvements program for equipment covers only freight cars and locomotives, which have comprised about 94 percent of the equipment purchases in recent years.[53] Private capital funds for elimination and protection of grade crossings are excluded for the reason that these must be financed from public funds as recommended below.

Compared with 1966-1968,[54] the proposed modernization programs dictate a 92 percent increase in cash requirements by 1975 and a 139 percent addition by 1980.[55] Existing long-term debt would rise to $20.5 billion by 1980—twice today's debt.[56] Issuances of equipment obligations in the first year alone would be $1.9 billion, nearly double the largest annual amount ever incurred by the industry.[57]

Cash Requirements, Including Interest Charges, For Capital Programs and Rail and Tie Installations
(millions)

	Average 1966-68	1970	1975	1980
Equipment Payments: Cash outlays, debt retirement and down payments	$ 874.9	$ 765.5	$1,313.9	$1,746.7
Interest Payments for Equipment Obligations	179.3	279.2	882.0	1,256.5
Interest Payments on Present Non-Equipment Long-Term Debt	238.0	252.8	287.6	308.5
Rail and Tie Installations	271.4	528.5	528.5	528.5
Capital Expenditures for Roadway and Structures (excluding rail and tie installations)	296.3	500.0	550.0	600.0
TOTAL	$1,859.9	$2,326.0	$3,562.0	$4,440.2

These essential cash requirements represent massive increases over the 1966-1968 period. By 1980, equipment payments would double, from $874.9 million to $1,746.7 million.[58] Interest payments on equipment debt would rise 600 percent, from $179.3 million to $1,256.5 million.[59] Improvements in plant and related facilities would require $600 million by 1980—double the level of 1966-1968. The costs of rail and tie installations would rise almost 100 percent. Even the smallest increase, a 30 percent rise in carrying charges on other long-term debt, represents $70.5 million in added costs.

The foregoing shows how dramatic must be the change from present conditions if the mammoth capital programs urgently required are to be launched. Moreover, these estimates are based on today's prices and therefore contain no adjustment for such elements as wage rates and the costs of materials, which have been in a constant upward spiral. Nor do they include increases in operating expenses which will result from traffic growth.

Present earnings are not only insufficient to cover the costs of added inflation, they are totally inadequate to sustain needed investment for the future even with massive borrowings.

PART ONE, SECTION III

[1] *Hearings on DOT Appropriations for 1971—Whitman, supra* n. 54, One-II, at 1055-1056.

[2] Council of Economic Advisers, *The Annual Report of the Council of Economic Advisers* (Economic Report of the President), T. C-2 at 178 (1970). The average annual rate of growth for real GNP (in 1958 prices) increased at the rate of 4.87 percent, from $497 billion to $728 billion.

[3] Appendix A, Table 18 and Appendix B.

[4] Appendix A, Table 19.

[5] Appendix B.

[6] *American Trucking in 1980, supra* n. 34, One-I, at 11.

[7] *Hearings on DOT Appropriations for 1971—Whitman, supra* n. 54, One-II, at 868.

[8] Unit trains and jumbo cars provide a unique service to shippers of bulk commodities that is based mainly upon inventory requirements, maximum loading and volume movements. Because of high tonnage required by both users and producers of bulk products, storage at both ends of the move is an essential part of the supply system. However, reliability allows destination storage requirements to be optimized to consumption patterns. Maximum loadings and multiple car consists assure low line-haul rates and operating costs. Speed has also been proportionally increased, as a result of the point-to-point nature of the movement. In addition to coal, ore, grain and other bulk commodities, many manufactured goods essential to production schedules also move by unit train. *See, e.g.*, Hayden, Stone Inc., *Railroad Industry Review 1969* at 50-51 (Sept. 1969).

[9] Appendix A, Table 24.

[10] Robert W. Harbeson, *Toward Better Resource Allocation in Transport*, XII(2) J. Law & Econ. 321-338 (Oct. 1969). Comparing out-of-pocket rail and motor costs for a variety of mileages, this study found that rail service represented a significant economic cost savings to society.

One of the major innovations in rail service has been the introduction of rapid freight service using trains composed of not less than 5 cars nor more than 20 cars. Rather than move on a fixed schedule, the train begins its journey whenever a shipper requires it. This concept has particular application to shippers of high value goods because of the minimization of time and storage costs. The success of such services has shown that there is a definite role for the railroads in offering premium service to the shipping public. *See, e.g., Railroad Industry Review 1969, supra* n. 8. *One-III*, at 50-52.

[11] Appendix A, Table 17. At the end of 1968, the latest year for which figures are available, Class I railroads owned and leased 27,376 locomotives; however, 14,003 of these were built before 1955.

[12] Appendix A, Table 11. Average gross capital expenditures for roadway and structures averaged $316.9 million from 1960 through 1969. These outlays compare with the total net investment for roadway and structures of, $17.4 billion on December 31, 1968. *See* n. 2, Two-I, *infra*.

[13] American Railway Engineering Association, *American Railway Engineering Association—Bulletin*, V. 70 at 713 (Feb. 1969). The projection for the present percentage of welded rail is an extension of 1968 data and prior trends. It is estimated there would be approximately 321,800 miles of track by the end of 1969 and that welded rail would have increased to 25,000 miles. *See* RAILWAY AGE, April 21, 1969 at 23 for a discussion of track profile.

[14] Appendix A, Tables 20 and 21. The average number of rail tons and cross ties laid in replacement from 1955 through 1968 are both less than 50 percent of the average installations from 1940 through 1954. Miles of new rail laid in replacement and in new tracks from 1955 through 1968 were only one-third of those laid in the preceding 15 years.

[15] Gross capital expenditures for 1955-1969 are listed in Appendix A, Table 11. Data for 1946 through 1949 are tabulated from reports submitted to the Bureau of Railway Economics, AAR. The data for 1950 through 1954 are from ICC, Report of *Selected Income and Balance-Sheet Items of Class I Railroads in the United States*, Statement No. M-125. The expenditures do not include a substantial amount of the costs of material and labor for replacement of rails and ties which are charged to operating expenses and, accordingly, are not classified as a capital expenditure.

[16] Outlays for rail and cross tie installations in railroad statistics are divided between capital and operating expense accounts pursuant to the accounting regulations of the ICC. *See* 49 C.F.R. C.X., subchapter c, pt. 1201, Property Accounts 8, 9, 10, 12 and Railway Operating Expense Accounts 212, 214, 216, 220. To facilitate analysis of capital and cash requirements, both types of expenditures were combined in this report.

[17] The average annual expenditures for 1966-1968 were separated into four major categories: (a) freight-carrying cars; (b) locomotives, except passenger units; (c) rail and tie installations; and (d) roadway and structures, except rail and tie installations. The averages were derived as follows:

(a)—*Freight Cars: Transport Statistics*, pt. 1, T. 138 at 32 for 1966-1968, excluding cabooses.

Average capital expenditures for cabooses were derived by (1) taking the number of new units purchased or built and the number of rebuilt units installed per year from *Transport Statistics*, pt. 1, T. 22 at 13 for 1966-1968 times the respective average unit cost per year from *Transport Statistics*, pt. 1, T. 37 at 16-17 for 1966-1968; (2) adding a projected betterment factor to these outlays; and (3) averaging the resulting totals for the three years. Total betterments were calculated by deducting expenditures for new and rebuilt freight cars and cabooses from total capital expenses for freight-train cars as listed in *Transport Statistics*, pt. 1, T. 138 at 32 for 1966-1968. *See* n. 27, One-III, *infra*, for calculations relating to new and rebuilt freight cars. Betterments to cabooses were considered to be the same percentage of total betterments as the proportions of expenditures for new and rebuilt cabooses were to expenditures for new and rebuilt cabooses and freight cars.

(b)—*Locomotives: Transport Statistics*, pt. 1, T. 138 at 32 for 1966-1968, excluding passenger units.

Average capital expenditures for passenger locomotives were estimated by (1) multiplying the average number of new units built and purchased and the number of rebuilt units from *Transport Statistics*, pt. 1, T. 22 at 13 for 1966-1968 times the respective average costs of such units during the same span as shown in *Transport Statistics*, pt. 1, T. 37 at 15, 17 for 1966-1968; and (2) adding an estimated betterment factor to the resulting figures. Betterments were calculated in an analogous manner to the calculations for cabooses.

(c)—*Rail and Tie Installations:* The estimated average represents capital and operating expenditures for installation of rail and ties in replacement and in new trackage during the 1966-1968 period. The amounts of installed rail and cross ties were derived from *Transport Statistics*, pt. 1, T. 92-93 at 20-21 for 1966-1968. Cost estimates cover rail, ties, labor, welds, tie plates, anchors and spikes. For years prior to 1970, costs were approximated by applying the labor and material costs for those years as well as the weight of rail installed. For standards relating to future installation requirements, *see* ns. 39-47, One-III, *infra*.

(d)—*Roadway and Structures:* Estimates are derived from *Transport Statistics*, pt. 1, T. 138 at 32 for 1966-1968, excluding gross capital expenditures for ties, rail, other track material and tracklaying and surfacing. These excluded accounts averaged $83 million during the 1966-1968 period.

[18] The average net investment, as shown in Appendix A, Table 10, was $27.7 billion in 1969.

[19] The total undepreciated investment in road and equipment including cash, material and supplies was shown as $36,924,054,000 in *Transport Statistics*, pt. 1, T. 158 at 53-54 for 1968 at the close of 1968, but this figure does not include the New York, New Haven and Hartford Railroad Company. For this reason, the figure should

be $37,377,679,000. At the end of 1969, the same accounts were estimated at $37,694,614,000, as compiled from *Annual Report Form A* submitted by the individual Class I railroads to the ICC.

In 1900, the total investment amounted to $10,814,430,000 as shown in *Statistics of Railways* at 96 (1900).

[20] Figures for freight cars owned and leased at the close of 1959 are from *Transport Statistics*, pt. 1, T. 21 at 18 for 1959. The estimate for the end of 1969 is from records of Car Service Division, AAR. Neither total includes cabooses, which, according to the same sources, represented approximately 1 percent of the total freight-train cars in both years. Revenue ton-miles for 1959 and 1969 are listed in Appendix A, Table 18.

[21] Private car ownership figures for 1959 were compiled from American Railway Car Institute, *Railroad Car Facts*, 1 (1961). Totals for 1969 were developed from data in The Railway Equipment and Publication Company, *The Official Railway Equipment Register* (Jan. 1970) by the Car Service Division, AAR.

[22] In 1969, the average serviceable freight car on the lines of Class I railroads moved 1,426 ton-miles of freight per day compared with 950 ton-miles per day in 1959. The averages were produced from the following ICC Reports: *Train and Yard Service of Class I Railroads in the United States*, Q-210 (OS-A) and *Motive Power and Car Equipment of Class I Railroads in the United States*, Q-240 (OS-C) for the year 1969. For the year 1959, the data sources were *Freight Train Performance of Class I Railroads in the United States*, M-211 (OS-A) and *Car Equipment of Class I Railroads in the United States*, M-240 (OS-F).

[23] *Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution, Rules and Practices*, 335 I.C.C. 264, 308 (1969).

[24] Annual installation requirements for freight cars are listed in Appendix C, *A Proposed Modernization Program For the Railroad Industry*, at Table 1.

[25] The average cost of new and rebuilt freight cars depends on the number of cars in each class installed and the proportion of new to rebuilt cars. For 1965-1968, the average cost of new freight cars installed was $14,700 and the average cost of rebuilt cars was about $6,500, according to *Transport Statistics*, pt. 1, T. 37 at 15 for 1965-1968. A summary of *Annual Report Form A* submitted by individual railroads to the ICC in 1969 indicates that the average cost of new freight units was $15,700 and the cost of rebuilt units was $8,500. A conservative average of $14,000 for new and rebuilt cars was used in both the projections for capital and for cash flow requirements in this report. As stated in the report, no allowance has been made in the projection for increases in equipment prices.

Annual capital requirements are listed in Appendix C, Table 1.

[26] *Transport Statistics*, pt. 1, T. 22 at 13 for 1966-1968. Retirements exclude cabooses and changes resulting from reclassification of other freight-train cars.

[27] Estimates of the cost of betterments of freight cars were derived by deducting the projected total annual costs of new and rebuilt freight cars; namely, the average car cost of $14,000 times the units which were purchased, built and rebuilt as listed in *Transport Statistics*, pt. 1, T. 22 at 13 for 1966-1968 from capital expenses for freight cars. *Transport Statistics*, pt. 1, T. 138 at 32 for 1966-1968, was the source for capital expenses and has been reduced by the estimated expenditures for cabooses as discussed in n. 17(a), One-III, *supra*.

The same general process was followed for locomotive betterments, except that capital expenditures for locomotives were reduced by the estimated outlays for passenger units as discussed in n. 17(b), One-III, *supra*.

[28] Appendix C, Table 1. It is assumed that major repairs on freight cars and locomotives will be increased as the car fleet grows. Heavy repairs which are not capitalized have been excluded from this analysis, but they would also have to be increased. One major objective of the repair program is to expand the number of serviceable freight cars in the present fleet thus reducing the need for equipment purchases.

[29] From 1959 to 1969, the private car ownership increased 1.9 percent per year. *See* n. 21, One-III, *supra*.

[30] ICC, Reports of *Motive Power and Car Equipment of Class I Railroads in the United States*, Statement No. Q-240 (OS-C).

[31] Appendix A, Table 17.

[32] The retirement program was premised on retiring 1,716 units per year and replacing present freight locomotives on an average life cycle of 15 years.

[33] *Transport Statistics*, pt. 1, T. 37 at 15 for 1967-1968. In 1967, the average new locomotive for which costs were reported had 3,046 horsepower and cost $251,663. In 1968 the average dropped to 2,656 horsepower and the cost to $236,630. The 1968 data do not include all the new units installed and also do not include the price of any leased units. An average cost of locomotives of $250,000 for a unit of about 3,000 horsepower was used for projecting capital costs.

[34] Annual capital and installation requirements for locomotives are listed in Appendix C, Table 1.

[35] *See* ns. 27-28, One-III, *supra*.

[36] Appendix C, Table 1.

[37] From 1961 through 1968, there was a 257 percent increase in derailments due to defects and failures in the roadway. For a detailed analysis of these statistics, *see* Appendix A, Table 9.

[38] Appendix A, Table 21.

[39] The standard of 60 years for the total life of new rail (132-140 pounds per yard) was developed from a survey of members of the General Committee. Operating-Transportation Division, AAR, taken in February 1970.

[40] The annual need for new rail was estimated at 11,014 rail miles per year. This program would renew all primary trackage at the end of 30 years. The average miles of new rail laid in replacement and new tracks for 1959 through 1968 was 3,922 rail miles per year. Appendix A, Table 21. Total trackage replacement needs—new and relay combined—were reduced by 1,072 rail miles per year from the present 643,600 rail miles, or 5 percent over the 30-year period, to give effect to the continued abandonment of light density lines and duplicate trackage that has occurred in recent years.

[41] The remaining trackage would be maintained with relay rail. Requirements for relay rail for secondary, yard and switching tracks were thus estimated at 9,366 rail miles annually. The relay rail would be supplied from rail released by the installation of new rail and from abandoned trackage. The amount of rail thus made available was reduced by 18 percent for defective rail and cropping of rail ends.

From 1959 through 1968, approximately 6,824 rail miles were laid annually with second-hand rail. *See Transport Statistics*, pt. 1, T. 92 at 58 for 1959-1962, 33 for 1963, 20 for 1964-1968 for tons of second-hand rail laid in all tracks and for the average weight of used rail laid in replacement. The same average weight—99.4 pounds per year—was used to estimate the miles of used rail laid in new track.

[42] The survey of railroad officials (*see* n. 39, One-III, *supra*) indicated that the approximate costs of installing two miles of new rail (one mile of track) was $60,000. For relaying of released rail, the estimate was $10,000 per track mile. These costs included necessary labor, welds, rail, tieplates, anchors and spikes, but not ties, ballast or surfacing. Expenditures for rail installations were reduced by the scrap value of second-hand rail remaining after the insertion of new and relay rail. Costs were not separated between operating expenses and investment accounts as reported to the ICC.

[43] With minor variations due to climatic conditions and terrain, the responses to the survey of railroad officials suggested a 35-year life for new cross ties. Cyclical maintenance would require 24.6 million cross ties per year after allowing for abandonments as discussed in n. 40, One-III, *supra*.

[44] The average number of cross ties installed in replacement and in new track from 1959 through 1968 was 16.6 million. Appendix A, Table 21.

[45] Projected costs of $8.00 per tie (including labor) are not separated between operating expenses and investment accounts as reported to the ICC.

[46] More adequate ballast replacement with higher quality interlocking types for branch and yard tracks should be inaugurated immediately if these tracks are to withstand today's heavier loads and higher speeds. New standards for grade and alignment must also be devised to reflect present operating conditions.

[47] For 1966 through 1968, these outlays averaged $296 million. *See* n. 17(d). One-III, *supra*. A breakdown of 1969 expenditures between track and other railway accounts was not available as of this writing. Gross capital expenditures for all roadway and structures exceeded $300 million in only five of the last 12 years. Appendix A, Table 11.

[48] Yearly capital requirements are contained in Appendix C, Table 1.

[49] Appendix A, Table 12. This total falls far short of meeting cash payments and interest charges of the 1966-1968 period as shown at p. 15, *infra*.

[50] Appendix A, Table 13.

[51] Based on calculations of data contained in *Transcript Statistics*, pt. 1, for 1965-1968, the average interest rates of non-equipment, long-term debt outstanding at the end of the year were as follows: 1965—4.14 percent; 1966—4.14 percent; 1967—4.12 percent; and 1968—4.21 percent. For 1969, it was estimated that the comparable rate would be approximately 4.25 percent on existing indebtedness.

The non-equipment debt was derived by reducing the total long-term debt (T. 158 at 58 for 1965, 54 for 1966-1968) by the sum of equipment debt due after one year (*Id.*), and by the equipment debt due within one year (T. 146-A at 45 for 1965, 42 for 1966, 41 for 1967-1968 and T. 147-A at 48 for 1965, 45 for 1966, 44 for 1967-1968). The projected interest on total debt and the projected interest on equipment obligations were then developed by using the respective average interest rates (T. 121-A at 26 for 1965-1968). Interest on non-equipment debt—the difference between interest on total debt and interest on equipment debt—was then divided by the amount of non-equipment debt to obtain the average interest rate.

[52] Equipment financing was programmed for repayment in 15 annual installments. A 20 percent down payment was assumed for new equipment trust obligations; no down payment was assumed for other equipment financing. Interest for conventional equipment

trusts was calculated at 8 percent. A 9 percent rate was estimated for conditional sales agreements, deferred payment plans and the present non-equipment long-term debt which must be refinanced by 1980. Interest on all future debt was assumed to require semiannual payments. The estimated interest rates for each type of financing are generally about 1 percent lower than those now facing the industry. For example, the estimated average interest costs for seven recent equipment trusts approved by the ICC were 8.95, 8.89, 9.25, 8.98, 9.25, 9.11 and 9.42 percent. Appendix A, Table 16.

On a straight debt issue the interest has been estimated at a minimum of 9½ to 10 percent. Office of High-Speed Ground Transportation, U.S. Dep't. of Transportation. *Prospective Costs of Capital in the Northeast Corridor*, Prepared by Lionel D. Edie & Co., c. 12 at 4 (Dec. 1969).

[53] *Transport Statistics*, pt. 1, T. 138 at 32 for 1966-1968. For 1966 through 1968, capital expenditures for all railroad equipment averaged $1,192.4 million. Outlays for freight carrying cars and locomotives, excluding passenger locomotives, represented approximately $1,120.4 million. Reductions for cabooses and passenger locomotives were calculated as discussed in n. 17(a), One-III, *supra*.

[54] The average cash requirements for 1966-1968 were divided into the following major categories: equipment payments, interest payments on equipment obligations, interest payments on non-equipment long-term debt, cash requirements for rail and tie installation, and capital improvements for other roadway and structures.

(a) Equipment payments for 1966-1968 included (1) estimated down payments on equipment trusts listed in *Transport Statistics*, pt. 1, T. 147-A at 45 for 1966, 44 for 1967-1968; (2) cash paid on acceptance of conditional sales and/or deferred payment contracts listed in *Transport Statistics*, p. 1, T. 146-A at 42 for 1966, 41 for 1967-1968; (3) payments on existing obligations as shown in Appendix A, Table 15, Column 3; and (4) an estimate for "other" cash outlays for equipment, which includes outright cash purchases and expenditures for betterments. The "other" cash outlays for equipment were based on capital expenditures less (1) equipment obligations issued, (2) down payments and (3) cash paid on acceptance in each year. Equipment obligation issued are set forth in Appendix A, Table 15, Column 2.

The breakdown of these payments and comparable data for the future years are as follows:

EQUIPMENT PAYMENTS:

Cash Outlays, Debt Retirements and Down Payments
(millions)

	Average 1966-1968	1970	1975	1980
Down Payments & Cash Paid on Acceptance of Equipment	$ 93.8	$ 80.5	$ 82.6	$ 84.8
Principal Payments on Equipment Obligations	478.9	550.0	1,064.2	1,461.9
Cash Outlays for Equipment	302.2	135.0	167.0	200.0
TOTAL	$874.9	$765.5	$1,313.8	$1,746.7

Equipment payments for 1966-1968 cover passenger locomotives and cabooses whereas these types of equipment are omitted from 1970-1980 projections.

(b) Estimated interest payments on equipment obligations for the three-year period were derived from the information contained in the 1965-1968 editions of *Transport Statistics*.

Equipment debt outstanding throughout the year was considered to be the debt outstanding at the end of the prior year (*Id.*, pt. 1, T. 146-A at 45 for 1965, 42 for 1966, 41 for 1967; and T. 147-A at 48 for 1965, 45 for 1966, 44 for 1967), less the debt retired during the year (*Id.*, pt. 1, T. 146-A at 42 for 1966, 41 for 1967-1968; and T. 147-A at 45 for 1966, 44 for 1967-1968). Figures for both debt outstanding throughout the year and debt retired during the year were multiplied by the average interest rate on outstanding equipment debt at the end of the prior year (*Id.*, T. 121-A at 26 for 1965-1967). New debt during the year was multiplied by the average interest rate on such issuances. (Both new debt and interest rates are listed in *Id.*, T. 148 at 46 for 1966, 45 for 1967-1968 for equipment trust obligations; and in T. 146-A at 42 for 1966, 41 for 1967-1968 for conditional sales obligations.) Semiannual interest payments on both new and retired debt were adjusted for the estimated time that the obligations were in effect.

(c) Interest payments on non-equipment long-term debt during 1966-1968 exclude amounts payable to affiliated companies for debt in default and for receivers' and trustees' securities. The remainder —funded debt unmatured—is set forth in Appendix A, Table 14. An approximation of the average interest paid on non-equipment long-term debt was produced from *Transport Statistics* by determining the following factors: (*1*) non-equipment long-term debt

at the beginning of the year—funded debt unmatured due after one year plus all debt due within one year for the end of the prior year (T. 158 at 58 for 1965, 54 for 1966-1967) less equipment debt due within one year at the end of the prior year (T. 146-A at 45 for 1965, 42 for 1966, 41 for 1967; and T. 147-A at 48 for 1965, 45 for 1966, 44 for 1967); (*2*) funded debt unmatured issued during the year (T. 148 at 46 for 1966, 45 for 1967-1968); (*3*) non-equipment debt retired during the year (adding (*1*) and (*2*) and subtracting therefrom the non-equipment debt as described in (*1*) for the end of the subject year); and (*4*) non-equipment debt existing throughout the year was the difference between (*1*) and (*3*). Then the debt which existed throughout the year (*4*) was multiplied by the average interest rate for non-equipment debt at the end of the prior year (*see* n. 51, One-III, *supra*); and the debt retired during the year (*3*) was multiplied by the same interest rate and adjusted for the timing of the retirements.

These two interest payments were added to interest charges on new non-equipment debt issued (*2*) as developed from the rates and amounts shown in *Transport Statistics*, pt. 1, T. 148 at 46 for 1966, 45 for 1967-1968 for funded debt unmatured. As with retirements, new issuances were adjusted for the period in which the obligations were in force. The sum of these three interest calculations was used as the estimated interest paid on non-equipment debt during the year.

(d) Cash requirements for rail and tie installations and capital improvements for other roadway and structures from 1966 through 1968 were considered to be equivalent to the respective capital costs. *See* ns. 17(c) and 17(d), One-III, *supra*.

[85] Annual cash requirements are detailed in Appendix C, Table 2.

[86] Under the assumed methods of financing, outstanding equipment obligations would reach $14.77 billion by the end of 1980 and other long-term debt would remain at $5.72 billion. Latest comparable data are for December 31, 1968, when outstanding long-term debt was $9.92 billion. Appendix A, Table 14, Columns 3 plus 4.

[87] Total capital expenditures for installations of freight cars and locomotives in 1970 are programmed at $2,014 million. Down payments on the 20 percent of this equipment financed under equipment trusts would amount to $80.56 million and the obligations issued would therefore be $1,933.44 million. The greatest amount of equipment obligations previously issued in a single year was $1,090.9 million in 1966. *See* Appendix A, Table 15.

[88] Equipment payments for 1970 through 1980 include estimated retirement of $4.26 billion in obligations which were incurred in prior years. Debt for past conditional sales and deferred payment contracts was paid off on the basis of an average of 12 annual installments; principal payments for equipment trusts were spread over 15 years. For terms of financing, *see, Investigation of Costs*

of Intercity Rail Passenger Service, supra n. 36, One-I, at App. D-8 and D-9. The estimated amount due in 1970 for prior equipment obligations was $550 million. By 1980, this figure will decline to $144 million. *See* Appendix A, Table 13.

Equipment payments also cover retirements of obligations incurred after 1970, down payments on the 20 percent of the equipment financed by equipment trusts, and betterments. Eventually, these items would approximate the total capital requirements as the modernization program completes a full cycle of equipment financing.

[89] Interest payments on equipment obligations from 1970 through 1980 call for semiannual payments for both prior and new debt. Average interest rates for the appropriate year of issuance were applied to the amount of prior debt existing throughout the year and to debt retired during the year for that time it was outstanding. Interest on new obligations was also adjusted for retirements during each year. The future carrying charges for new debt were set at 8 percent for equipment trusts and 9 percent for conditional and deferred payment contracts. In 1970, interest on pre-1970 equipment debt comprised 84.8 percent of total equipment interest; by 1980 it will shrink to 1.4 percent.

APPENDIX A

SELECTED STATISTICS

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TABLE 1

OPERATING INCOME, OTHER INCOME, AND FIXED CHARGES

Class I Railroads

1955-1969

(Millions)

Year	Net railway operating income before Federal income tax deductions 1	Other income less miscellaneous deductions 2	Fixed and contingent interest charges 3	Other charges * 4	Net income before Federal income tax deductions * 5
1955	$1,542.3	-$213.6	$351.4	$63.1	$1,341.4
1956	1,460.2	232.7	353.9	91.1	1,268.3
1957	1,242.7	234.2	358.7	59.1	1,057.6
1958	1,003.3	271.6	372.8	59.1	842.7
1959	1,015.1	257.0	369.2	97.6	845.4
1960	786.9	283.5	367.5	55.6	647.5
1961	780.2	260.1	363.7	51.9	624.9
1962	682.5	253.4	357.5	51.0	727.8
1963	869.6	256.6	359.2	51.2	815.7
1964	956.1	301.3	366.2	55.1	836.1
1965	1,125.2	294.9	379.8	65.9	978.3
1966	1,232.2	321.4	398.2	65.1	1,090.1
1967	742.8	373.3	431.8	64.2	620.1
1968	743.7	409.0	450.6	66.6	635.5
1969	765.9	412.1	495.5	64.7	617.3

* Includes rents for leased property and amortization of discount on funded debt.

* Ordinary income (before extraordinary and prior period items).

Sources:

Columns 2, 3 and 4 are taken from ICC, *Transport Statistics in the United States*, Statement A-1 Summary for 1955, table 19a for 1956-1968, columns 2, 3 and 4 for 1969 tabulated from Form IBS reports only.

Entries in columns 2 and 5 for 1968 have been revised to reflect Penn Central revision.

Columns 1 and 5 for 1969 computed from *Revenues and Expenses—Railroads*, Form R&E, and *Selected Income and Balance-Sheet Items—Railroads*, Form IBS, reports of individual railroads submitted to the ICC.

TABLE 2

FIRST QUARTER NET EARNINGS

Class I Railroads

1966-1970

First 3 mos.	United States	Eastern District	Southern District	Western District
		Net Railway Operating Income (millions)		
1966	$214.3	$72.0	$39.2	$103.2
1967	145.4	32.6	40.9	71.9
1968	148.5	23.5	37.7	87.3
1969	142.0	26.7	47.6	67.7
1970	60.2	* 38.5	49.2	67.5
		Net Income (Ordinary) (millions)		
1966	$172.2	$45.9	$27.0	$ 99.4
1967	121.7	15.8	30.8	75.1
1968	111.7	4.6	27.1	79.9
1969	94.4	1.5	33.1	59.8
1970	2.1	* 93.8	32.6	59.1
		Rate of Return (12 mos. to 3/31)		
1966	3.87%	3.49%	4.16%	4.15%
1967	3.67	3.19	4.46	3.71
1968	2.66	1.51	3.77	2.86
1969	2.43	1.33	4.01	2.85
1970	2.08	.37	4.16	2.81

* Deficit.

Sources:

Net railway operating income and net income for 1966-1968 from ICC, *Selected Income and Balance Sheet Items of Class I Railroads in the United States*, Statement No. Q-125 (IBS). 1969-1970 from *Revenues and Expenses—Railroads*, Form R&E, reports of individual railroads submitted to the ICC.

Rate of return for year ending March 31 is based on net railway operating income data from *Revenues and Expenses—Railroads*, Form R&E, and *Selected Income and Balance Sheet Items—Railroads*, Form IBS, reports of individual railroads submitted to the ICC, and net investment estimates were developed by interpolation from year-end figures from ICC, *Transport Statistics in the United States*, table 15B (1968).

TABLE 1
INTEREST CHARGES AND EQUIPMENT RENTS
Class I Railroads
1955-1969
(Millions)

Year	Interest charges 1	Equipment rent rents payable 2	Total interest charges and equipment rents 3
1955	$350.2	$210.4	$ 560.6
1956	392.1	210.2	562.3
1957	394.5	200.0	588.5
1958	372.4	259.2	632.0
1959	369.2	282.3	651.5
1960	367.5	321.2	688.7
1961	381.7	344.3	708.0
1962	357.5	348.6	706.1
1963	359.2	375.9	735.1
1964	386.2	392.1	758.3
1965	375.6	443.5	819.1
1966	398.2	492.5	890.7
1967	433.4	535.6	967.6
1968	450.6	630.2	1,080.8
1969	495.5	662.1	1,157.6

Sources:

Columns 1 and 2 from ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1955, table 158 for 1956-1968. The 1969 data have been tabulated from *Selected Income and Balance Sheet Items—Railroads*, Form IBS, and *Revenues and Expenses—Railroads*, Form RAE, reports of individual railroads submitted to the ICC.

Column 3 is calculated.

TABLE 4
FEDERAL INCOME TAXES
Class I Railroads
1955-1969
(Thousands)

Year	Amount
1955	$414,299
1956	391,984
1957	320,338
1958	240,972
1959	267,645
1960	292,903
1961	242,436
1962	156,786
1963	164,109
1964	137,919
1965	163,656
1966	166,323
1967	66,317
1968	66,078
1969	106,653

Source:

ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1955, table 159 for 1956-1968. The 1969 entry is tabulated from *Revenues and Expenses—Railroads*, Form RAE, reports of individual railroads submitted to the ICC.

TABLE 5
NET WORKING CAPITAL
Class I Railroads
1955-1969
(Millions)

Year	Net working capital 1	Debt due within one year 2	Net working capital plus debt maturing within one year 3
1955	$933.6	$399.1	$1,344.7
1956	683.6	382.6	901.0
1957	555.1	417.1	338.2
1958	806.5	394.0	412.5
1959	799.1	473.4	324.7
1960	577.9	451.4	126.1
1961	510.9	394.2	116.7
1962	646.8	425.7	221.1
1963	827.8	452.3	375.5
1964	730.8	454.2	276.6
1965	636.3	463.9	172.3
1966	477.2	529.4	◦ 52.2
1967	276.3	524.7	◦ 248.4
1968	152.7	615.3	• 462.5
1969	58.4	751.4	• 693.0

◦ Net deficit.

Sources:

Columns 1 and 2: ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1955, table 158 for 1956-1968 except that column 2 figures for 1955-1957 are from ICC, *Selected Income and Balance Sheet Items of Class I Railroads*, Statement No. M-125 (IBS). The 1969 data have been tabulated from *Selected Income and Balance Sheet Items—Railroads*, Form IBS, reports of individual railroads submitted to the ICC.

Column 3 is tabulated.

TABLE 6
PROPERTY INVESTMENT, OPERATING REVENUES, RATE OF RETURN ON INVESTMENT, AND EARNINGS
Class I Railroads
1955-1969

Year	Net investment in transportation property (millions) 1	Railway operating revenues (millions) 2	Net railway operating income (millions) 3	Rate of return on net investment (percent) 4	Net income • (millions) 5
1955	$26,780.9	$10,106.3	$1,129.0	4.22	$927.1
1956	27,012.2	10,550.9	1,068.2	3.95	876.3
1957	27,440.4	10,691.4	922.3	3.36	757.4
1958	27,633.1	9,564.6	762.3	2.76	601.7
1959	27,444.2	9,825.1	747.7	2.72	579.9
1960	27,452.5	9,510.3	584.0	2.13	484.6
1961	27,320.0	9,189.1	537.8	1.97	442.8
1962	26,519.4	9,439.9	725.7	2.74	579.0
1963	25,902.1	9,559.5	805.7	3.12	651.6
1964	25,443.0	9,856.5	838.2	3.30	668.2
1965	26,140.6	10,207.8	981.5	3.69	818.6
1966	26,920.4	10,654.7	1,045.9	3.90	867.8
1967	27,344.8	10,366.0	876.4	3.26	555.6
1968	27,922.9	10,854.7	877.6	3.18	569.4
1969	27,733.6	11,450.6	654.6	2.36	510.6

• Ordinary income (before extraordinary and prior period items).
• Revised to include latest changes.

Sources:

Columns 1: Entries for 1955-1968 represent beginning and end-of-year averages and are computed from data in ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1955, table 158 for 1956-1968. Entries for 1969 are from the Annual Report Form A of individual roads submitted to the ICC.

Columns 2, 3 and 5: ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1955, table 156 for 1956-1968. The 1969 entries are from *Selected Income and Balance Sheet Items—Railroads*, Form IBS, reports of individual railroads submitted to the ICC. Entry in column 5 for 1969 has been revised to reflect Penn Central revision.

Column 4 is calculated.

TABLE 7
COMPARATIVE FINANCIAL DATA:
Class I Railroads, AT&T and General Motors Corp.
(Dollar amounts in millions)

Item	Class I Railroads 1968	Class I Railroads 1967	Bell System • 1968	Bell System • 1967	General Motors Corp. 1968	General Motors Corp. 1967
Net investment (including working capital) •	$27,723	$27,545	$33,748	$31,402 ◦	$ 9,144	$ 8,785
Shareholders' equity •	17,979	18,084	23,006	22,040	9,509	8,994
Gross revenues (sales)	10,855	10,366	14,310	13,009	22,755	20,026
Net operating income	878	876	2,356	2,317	1,713	1,621
Ratio to net investment	3.44%	3.46%	7.0%	7.4%	18.7%	18.5%
Net income	$ 569	$ 554	$ 2,052	$ 2,049	$ 1,732	$ 1,627
Ratio to shareholder's equity	3.2%	3.1%	8.9%	9.3%	18.2%	18.1%
Number of employees	591,000	610,000	679,000	656,000	757,000	728,000

• AT&T and principal telephone subsidiaries.
• Average beginning and end of year.
◦ Includes $222 million estimate for working capital.
• Includes $223 million estimate for working capital.

Sources:

Class I Railroads: Net investment and shareholders' equity have been calculated from data in table 158 and gross revenues, net operating income and net income have been derived from table 156, ICC, *Transport Statistics in the United States*. The number of employees has been derived from ICC, *Wage Statistics of Class I Railroads*, Statement No. A-300. Ratios calculated.

Bell System: Net investment and shareholders' equity have been calculated from data in Moody's *Public Utility Manual* (1969), page 229; gross revenues, net operating income and net income have been derived from page 228, and number of employees from page 227. The ratios were calculated.

General Motors Corporation: Net investment and shareholders' equity have been calculated from data in Moody's *Industrial Manual* (1968), pages 2281 and 2284; gross revenues, net operating income and net income have been derived from page 2282, and number of employees from page 2281. The ratios were calculated.

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TABLE 8

RELATIONSHIP OF INVESTMENT TURNOVER, MARGIN OF PROFIT AND RATE OF RETURN FOR COMMON CARRIERS

1968

Carrier	Average net investment in operating property (millions) 1	Total operating revenues (millions) 2	Net operating income before income taxes (millions) 3	Investment turnover (times per year) (2÷1) 4	Margin of operating profit (3÷2) 5	Rate of return on investment (3÷1) 6
Railroads (Class I)	$27,721	$10,459	$744	.38	6.85%	2.68%
Motor carriers of property (Class I)	2,299	3,953	455	4.16	4.77	19.80
Motor carriers of passengers (Class I)	362	669	81	1.92	11.99	22.66
Water carriers (Classes A and B)	277	107	15	1.11	13.64	12.75
Oil pipelines	2,665	990	413	.35	41.70	15.48
Air lines (certificated industry)	7,194	3,714 [1]	928	.516	6.81	7.34

[1] Includes $448 million Federal subsidy.

Sources:

Railroads (Class I):—
Column 1: Average net investment has been computed from ICC *Transport Statistics in the United States* (the 1967 and 1968 issues), column 2, and ICC *Transport Statistics in the United States* (the 1966 issue).
Columns 4, 5 and 6 are calculated.

Motor carriers of property (Class I):—
Column 1: Average net investment has been computed from data in ICC *Transport Statistics in the United States*, part 7, table 2, 1967 and *63rd Annual Report of the Interstate Commerce Commission* (table 20, at 141).
Column 2: *63rd Annual Report of the Interstate Commerce Commission* (table 18, at 140).
Column 3: *63rd Annual Report of the Interstate Commerce Commission* (table 20, at 141).
Columns 4, 5 and 6 are calculated.

Motor carriers of passengers (Class I):—
Column 1: *63rd Annual Report of the Interstate Commerce Commission* (table 26, at 144).
Column 2: *63rd Annual Report of the Interstate Commerce Commission* (table 24, at 143).
Column 3: *63rd Annual Report of the Interstate Commerce Commission* (table 25, at 144).
Columns 4, 5 and 6 are calculated.

Water carriers (Classes A and B):—
Column 1: *63rd Annual Report of the Interstate Commerce Commission* (table 28, at 144).
Column 2: *63rd Annual Report of the Interstate Commerce Commission* (table 24, at 141).
Column 3: *63rd Annual Report of the Interstate Commerce Commission* (table 25, at 144).
Columns 4, 5 and 6 are calculated.

Oil pipelines:—
Column 1: Average net investment has been computed from ICC *Transport Statistics in the United States*, part 6, (table 1, 1967 and *63rd Annual Report of the Interstate Commerce Commission*, table 16, at 144).
Column 2: *63rd Annual Report of the Interstate Commerce Commission* (table 33, at 147).
Column 3: *63rd Annual Report of the Interstate Commerce Commission* (table 34, at 148).
Columns 4, 5 and 6 are calculated.

Air lines (certificated industry):—
Column 1: Computed from CAB, *Air Carrier Financial Statistics*, December 1968, table 3, Columns 2 and 3 and Federal subsidy from CAB, *Air Carrier Financial Statistics*, December 1968, table 1.
Columns 4, 5 and 6 are calculated.

TABLE 9

CAUSES OF TRAIN DERAILMENTS

All Railroads

1961–1968

Cause	1961	1962	1963	1964	1965	1966	1967	1968	Percent increase 1968 over 1961
Negligence of employees	329	329	409	405	452	553	564	585	78
Defects or failures—equipment	1,268	1,258	1,627	1,619	1,699	1,950	1,631	1,747	38
Defects or failures—roadway	577	636	691	835	1,121	1,388	1,800	2,062	257
Miscellaneous	497	607	643	740	797	956	985	1,093	120
Total—derailments	2,671	2,830	3,370	3,599	4,069	4,847	4,980	5,487	105

Source:

Bureau of Railroad Safety, FRA, U.S. Dept. of Transportation (formerly Bureau of Economics, Interstate Commerce Commission) *Accident Bulletin* (table 124 (1961–1968)).

TABLE 10

NET EARNINGS, PROPERTY INVESTMENT AND RATE OF RETURN

Class 1 Railroads

1969

Ranking by net railway operating income	Railroad	Average net investment in transportation property 1	Net railway operating income 2	Rate of return on average net investment * 3	Ordinary net income 4	Ranking by average net investment
1	Norfolk & Western Ry.	$ 1,942,841,517	$117,556,127	6.05%	$ 80,224,610	2
2	Union Pacific R.R.	1,732,329,587	81,553,492	4.71	103,793,934	4
3	Southern Pacific Co.	1,960,726,690	69,271,697	3.57	77,559,113	3
4	Atchison, Topeka & Santa Fe Ry.	1,623,301,049	59,165,798	3.64	57,289,423	5
5	Southern Ry.	879,523,943	55,676,797	6.33	42,536,195	10
6	Chesapeake & Ohio Ry.	924,539,724	60,222,192	6.35	37,734,484	8
7	Seaboard Coast Line R.R.	1,010,198,177	35,121,574	3.48	33,186,849	6
8	Louisville & Nashville R.R.	919,138,266	32,916,313	3.58	22,187,975	9
9	Baltimore & Ohio R.R.	976,535,864	31,939,689	3.27	20,344,085	7
10	Missouri Pacific R.R.	818,386,985	28,948,720	3.54	15,500,547	11
11	St. Louis Southwestern Ry.	261,763,126	26,146,033	9.99	26,463,884	22
12	Illinois Central R.R.	771,602,587	21,602,008	2.80	21,283,018	13
13	St. Louis-San Francisco Ry.	393,372,944	20,510,919	5.21	14,603,353	20
14	Great Northern Ry.	730,836,926	19,248,184	2.63	23,394,794	15
15	Chicago, Burlington & Quincy R.R.	794,486,763	15,967,094	2.01	13,030,682	12
16	Denver & Rio Grande Western R.R.	252,380,673	14,354,892	5.69	12,852,292	23
17	Clinchfield R.R.	133,150,576	12,045,935	10.63	*	39
18	Kansas City Southern Ry.	206,717,104	11,455,516	5.54	8,868,866	28
19	Pittsburgh & Lake Erie R.R.	202,383,360	11,253,387	5.56	11,391,052	30
20	Cin'nati, New Orleans & Tex. Pac. Ry	142,350,023	10,460,942	7.35	6,501,575	34
21	Northern Pacific Ry.	746,453,477	10,268,394	1.38	22,523,760	14
22	Gulf, Mobile & Ohio R.R.	231,400,155	10,160,116	4.39	7,836,679	25
23	Texas & Pacific Ry.	211,088,300	9,201,666	4.36	8,499,079	26
24	Erie Lackawanna Ry.	397,796,830	9,048,592	2.27	1,258,859	19
25	Soo Line R.R.	238,594,667	7,789,744	3.26	5,378,637	24
26	Bessemer & Lake Erie R.R.	70,048,872	7,275,521	10.31	7,870,791	48
27	Western Maryland Ry.	157,194,651	6,646,067	4.23	3,677,622	32
28	Duluth, Missabe & Iron Range Ry.	93,905,513	5,682,068	6.05	7,979,017	42
29	Delaware & Hudson Ry.	91,804,826	4,916,215	5.36	3,513,823	43
30	Missouri-Illinois R.R.	41,790,790	3,710,349	8.88	3,024,101	55
31	Richmond, Fred'burg & Potomac R.R.	55,225,761	3,479,379	6.30	4,776,927	52
32	Detroit, Toledo & Ironton R.R.	74,733,104	3,281,227	4.39	4,225,451	45
33	Colorado & Southern Ry.	74,419,044	2,929,139	3.94	2,697,636	46
34	Kansas, Oklahoma & Gulf Ry.	26,046,595	2,366,501	9.08	1,854,913	59
35	Elgin, Joliet & Eastern Ry.	84,983,763	2,352,293	3.62	4,347,513	50
36	Central of Georgia Ry.	114,275,485	2,126,597	1.86	1,707,041	38
37	Bangor & Aroostook R.R.	62,692,176	1,562,938	2.49	175,487	51
38	Spokane, Portland & Seattle Ry.	125,659,372	1,516,375	1.21	294,096	35
39	Georgia, Southern & Florida Ry.	19,236,632	1,427,590	7.42	1,365,089	66
40	Florida East Coast Ry.	72,727,591	1,285,299	1.77	1,781,851	47
41	Georgia R.R.	20,696,351	924,644	4.47	*	63
42	Monon R.R.	40,914,004	767,572	1.88	74,372	56
43	Monongahela Ry.	46,285,925	766,355	1.66	* 1,209,040	54
44	Duluth, Winnipeg & Pacific Ry.	9,602,097	747,955	7.79	326,167	72
45	Detroit & Toledo Shore Line R.R.	15,892,860	732,297	4.61	565,313	68
46	Lake Superior & Ishpeming R.R.	17,880,970	619,825	3.50	546,693	67
47	Akron, Canton & Youngstown R.R.	19,878,398	612,417	3.08	183,016	65
48	Savannah & Atlanta Ry.	9,430,007	539,402	5.72	560,091	73
49	Toledo, Peoria & Western R.R.	11,475,216	480,930	4.19	460,726	69
50	Norfolk Southern Ry.	38,501,330	452,870	1.18	* 82,173	57
51	Alabama Great Southern R.R.	100,376,637	361,930	0.36	501,815	41
52	Chicago & Illinois Midland Ry.	11,452,195	234,137	2.04	484,408	70
53	Fort Worth & Denver Ry.	48,550,997	199,486	0.41	* 274,567	53
54	Maine Central R.R.	65,259,660	128,468	0.20	* 1,115,096	49
55	Western Pacific R.R.	164,826,747	* 43,946	*	* 1,591,681	31
56	Illinois Terminal R.R.	20,211,748	* 58,681	*	* 384,235	64
57	Northwestern Pacific R.R.	29,861,305	* 76,064	*	213,309	58
58	Central Vermont Ry.	21,675,032	* 87,919	*	* 636,636	62
59	Canadian Pacific Lines in Maine	10,282,511	* 179,300	*	*	71
60	Reading Co.	313,228,375	* 602,986	*	* 3,319,768	21
61	Ann Arbor R.R.	23,272,083	* 848,210	*	* 1,442,976	61
62	Chicago & Eastern Illinois R.R.	84,998,812	* 1,121,071	*	* 1,075,545	44
63	Missouri-Kansas-Texas R.R.	204,456,068	* 1,347,052	*	* 3,022,280	29
64	Boston & Maine Corp.	210,604,054	* 2,540,779	*	* 6,391,332	27
65	Lehigh Valley R.R.	154,189,454	* 3,299,111	*	* 5,223,758	33
66	Penn-Reading Seashore Lines	75,742,969	* 3,764,153	*	* 4,332,957	60
67	Central R.R. of New Jersey	119,737,323	* 5,630,676	*	* 9,729,829	36
68	Chicago, Rock Island & Pacific R.R.	402,251,243	* 7,876,555	*	* 11,581,401	18
69	Chi'go, Milw., St. Paul & Pac. R.R.	620,659,059	* 10,182,137	*	* 11,542,705	17
70	Grand Trunk Western R.R.	106,921,797	* 17,087,558	*	* 28,532,247	40
71	Chicago & North Western Ry.	689,143,975	* 18,373,143	*	* 22,437,662	16
72	Long Island R.R.	118,744,157	* 20,266,570	*	* 19,681,909	37
73	Penn Central Transportation Co.	4,351,996,360	* 67,820,674	*	* 82,813,968	1
	Total United States	$27,733,833,154	$656,800,300	2.36%	$510,649,560	

* Revised to include latest changes.
* Included in ordinary income of parent company.
* Deficit.

Sources:

Column 1 was tabulated from ICC, *Transport Statistics in the United States*, table 158 for 1968, and from the *Annual Report Form A* of individual railroads submitted to the ICC for 1969.

Columns 2 and 4 were derived from *Selected Income and Balance-Sheet Items—Railroads*, Form IBS, reports of individual railroads to the ICC.

Column 3 was calculated.

TABLE 12
GROSS CAPITAL EXPENDITURES
Class I Railroads
1955-1969
(Millions)

Year	Expenditures for equipment 1	Expenditures for roadway and structures 2	Total capital expenditures 3	Price deflator 4	Expenditures in constant (1958) dollars 5
1955	$ [illegible]	[illegible]	$ [illegible]	90.9	$1,000.6
1956	[illegible]	[illegible]	[illegible]	94.0	1,306.3
1957	[illegible]	[illegible]	[illegible]	97.5	1,430.5
1958	476.7	254.4	731.0	100.0	738.0
1959	[illegible]	[illegible]	[illegible]	101.6	805.1
1960	611.9	295.7	919.2	103.3	889.8
1961	627.1	279.3	949.4	104.6	618.0
1962	741.8	270.6	1,012.9	105.6	787.2
1963	744.9	256.9	1,001.8	107.2	973.7
1964	1,134.7	277.6	1,417.1	108.9	1,302.7
1965	1,343.6	327.1	1,670.7	110.9	1,470.4
1966	1,958.2	394.6	1,952.8	113.9	1,714.5
1967	1,189.4	378.1	1,522.5	117.6	1,294.6
1968	919.7	384.1	1,347.0	122.3	970.6
1969	1,065.5	470.2	1,508.7	128.1	1,177.8

Sources:

Columns 1, 2 and 3 from ICC, *Annual Income and Balance Sheet Statistics of Class I Railroads in the United States*, Statement No. 55-57, 1955-1957 pages 10-11; 1958 figures taken from selected Income and Balance Sheet Items—Railroads, Form 1BS, and *Report of Revenue and Expenses—Railroads* Form R&E reports of individual railroads submitted to the ICC.

Column 4: Report prepared for the Joint Economic Committee by the Council of Economic Advisers, *Economic Indicators*, for 1955-1956, page 2, December 1966 edition, and for 1959-1969, page 2, January 1970 edition.

Column 5 is calculated.

TABLE 13
CAPITAL SPENDING AND CASH FLOW
Class I Railroads
1955-1969
(Millions)

Year	Gross capital expenditures for additions and betterments 1	Cash flow from income account: Amount 2	Cash flow from income account: If less over capital expenditures 3
1955	$ 909.5	$1,134.1	$224.6
1956	1,237.9	1,014.4	- 223.5
1957	1,394.7	907.3	- 487.4
1958	738.0	947.3	209.3
1959	818.1	800.4	- 17.6
1960	919.2	693.9	- 225.2
1961	946.4	677.2	- 269.2
1962	812.9	663.8	- 149.1
1963	1,043.8	949.7	- 94.1
1964	1,417.1	926.9	- 490.2
1965	1,670.7	1,147.9	- 522.8
1966	1,952.8	1,481.2	- 471.6
1967	1,522.5	816.7	- 705.8
1968	1,347.0	834.0	- 514.1
1969	1,508.7	812.2	- 696.5

* Includes ordinary net income, depreciation and net retirement charges less cash dividends.
* Deficits.

Sources:

Column 1: See sources for Table 10.

Column 2: ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1955, tables 150 and 161 for 1956-1968. The 1968 data have been revised to reflect Penn Central revenue or ordinary net income. 1969 data have been tabulated from *Selected Income and Balance Sheet Items—Railroads*, Form 1BS, and *Report of Revenue and Expenses—Railroads* Form R&E reports of individual railroads submitted to the ICC.

Column 3 is calculated.

TABLE 11
MATURING LONG-TERM DEBT
Class I Railroads
1970-1980
(Millions)

Year	Equipment obligations [a] 1	Other long-term debt [b] 2	Total long-term debt 3
1970	$ 550	$ 351	$ 901
1971	530	97	627
1972	497	59	556
1973	461	216	677
1974	440	79	519
1975	414	75	489
1976	387	88	475
1977	343	91	434
1978	297	98	385
1979	204	27	231
1980	184	316	460
Total	$4,257	$1,497	$5,754

* Maturing equipment debt estimated—weighted values assuming 15-year term from date issued for equipment trust certificates and 12-year term from issuance date for conditional and deferred payment contracts.
* Other long-term debt does not include certain obligations of lessor companies guaranteed by operating companies.

Sources:

Column 1: Maturing equipment obligation estimates based on data in *Annual Report Form A* of individual railroads submitted to the ICC.

Column 2: Analysis of other long-term debt scheduled for maturity based on data in *Annual Report Form A* of individual railroads submitted to the ICC except that columns 2 for 1979 and 1980 tabulated from data on page 61115, Moody's *Transportation Manual* (1969).

Column 3 is calculated.

TABLE 14
SHORT-TERM DEBT, UNMATURED FUNDED DEBT, AND EQUIPMENT OBLIGATIONS
1955-1968
(Millions)

Dec. 31	Short-term loans and notes payable 1	Funded debt unmatured other than equipment obligations 2	Equipment obligations outstanding 3	Total 4
1955	$ 21.2	$6,627.5	$2,532.2	$ 9,180.9
1956	13.4	6,773.7	2,631.2	9,418.3
1957	15.4	6,623.4	2,912.3	9,551.1
1958	4.9	6,708.7	2,820.7	9,534.3
1959	8.2	6,570.2	2,756.7	9,335.1
1960	37.8	6,481.5	2,694.1	9,213.4
1961	18.7	6,305.2	2,576.6	8,880.5
1962	19.2	6,254.9	2,522.6	8,796.7
1963	16.5	6,197.9	2,575.2	8,789.6
1964	17.7	6,054.7	2,814.1	8,886.5
1965	8.5	5,911.8	3,181.6	9,101.9
1966	13.2	5,734.4	3,869.8	9,617.4
1967	95.7	5,619.7	4,153.7	9,829.1
1968	114.3	5,716.1	4,202.5	10,032.9

Sources:

Columns 1 and 2 are derived from ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1955, table 158 for 1956-1968.

Column 3 is derived from ICC, *Transport Statistics in the United States* tables 141, 141-A and 146-A.

Column 4 is calculated.

TABLE 15
EQUIPMENT OBLIGATIONS
Class I Railroads
1955-1969

Year	Outstanding at beginning of year (millions) 1	Issued during year (millions) 2	Retired during year (millions) 3	Outstanding at end of year (millions) 4	Average interest rate on equipment obligations: Issued during year 5	Average interest rate on equipment obligations: Outstanding 6
1955	$2,600.9	$279.8	$348.5	$2,532.2	3.08%	2.83%
1956	2,528.9	445.6	343.3	2,631.2	3.57	2.92
1957	2,629.3	631.0	348.0	2,912.3	4.33	3.28
1958	2,912.3	285.1	376.6	2,820.7	4.01	3.39
1959	2,820.7	299.8	363.8	2,756.7	4.61	3.53
1960	2,756.7	299.2	360.8	2,694.1	4.63	3.70
1961	2,693.6	225.9	342.2	2,577.3	4.44	3.80
1962	2,556.6	339.9	373.9	2,522.6	4.45	3.93
1963	2,522.6	456.0	403.1	2,575.2	4.29	4.01
1964	2,533.2	686.9	405.9	2,814.1	4.40	4.19
1965	2,800.9	803.5	422.8	3,181.6	4.52	4.36
1966	3,228.4	1,090.9	449.6	3,869.8	5.32	4.63
1967	3,869.4	757.0	492.8	4,153.7	5.83	4.87
1968	4,155.7	541.0	494.3	4,202.5	6.61	5.15
1969	4,214.4	633.1	530.8	4,316.8	8.00	n.a.

Sources:

Columns 1, 2 and 3 for all years and column 4 for 1969 only, have been tabulated from *Annual Report Form A* of individual railroads submitted to the ICC. Columns 1, 2 and 3 differ from comparable amounts shown in ICC, *Transport Statistics in the United States*, because of differences in concept, particularly with regard to obligations assumed in mergers which the ICC treats as securities issued by the surviving company.

Column 4 is taken from ICC, *Transport Statistics in the United States*, tables 141, 141-A and 146-A for 1955-1968.

Column 5 entries represent weighted averages computed from ICC, *Transport Statistics in the United States*, tables 146-A and 148 for 1955-1968. The 1969 entry in Column 5 is an estimated figure based on interest rates on equipment trust certificate issuances reported in ICC orders.

Entries in column 6 are from ICC, *Transport Statistics in the United States*, table 121-A.

TABLE 16

INTEREST RATES FOR EQUIPMENT OBLIGATIONS AUTHORIZED BY ICC IN 1970

Class I Railroads

Date authorized	Railroad	Amount (millions)	Nominal rate of interest	Estimated average interest cost
	1	2	3	4
January 9	Southern Pacific	$ 9.9	8.5%	$ 0.665%
16	Southern Pacific	2.6*	8.5	0.868
19	Louisville & Nashville	9.0	8.625	0.85
21	Southern Railway	6.7	8.5	0.6343
23	Great Northern	7.3	8.5	0.61
30	Illinois Central	7.0	8.5	0.70514
February 3	See Line	3.8	9.0	0.17397
20	Union Pacific	9.0	8.25	0.370
March 9	Southern Pacific	9.9	8.125	0.359
16	Southern Railway	9.7	8.25	0.46389
17	Missouri Pacific	6.3	8.25	0.7007
19	Seaboard Coast Line	6.1	8.625	0.829
30	Louisville & Nashville	9.9	8.75	0.79
31	Chesapeake & Ohio	4.6	8.5	0.6352
April 9	Atchison, Topeka & Santa Fe	37.0	8.75	0.81
May 1	Missouri Pacific	6.3	9.0	0.8498
8	Southern Pacific	9.9	8.75	0.888
11	Seaboard Coast Line	8.9	9.25	0.252
19	Southern Railway	7.4	9.0	0.90427
June 3	Louisville & Nashville	9.7	9.25	9.25
30	Chesapeake & Ohio	4.6	9.125	9.1056
July 1	Baltimore & Ohio	4.7	9.375	9.4185

* Supplement to $9.9 million authorized January 9.

Source:
Interstate Commerce Commission orders.

TABLE 17

AGE OF RAILROAD FREIGHT CARS AND LOCOMOTIVES

Railroad owned and leased per class freight cars

Age in 1969	Cars built or purchased new	Rebuilt cars (from date rebuilt)	Cars purchased secondhand (from date purchased)	Total
0-10	699,873	114,057	90,370	904,280
11-20	404,833	7,284	8,366	420,483
21-30	268,299	2,735	1,416	272,450
31-40	66,486	525	869	67,880
over 40	41,251	134	374	41,759
Total	1,280,462	124,735	101,375	1,506,772

Locomotives owned and leased, Class I railroads

Age in 1969	Diesel	Electric	Other	Total
1-4	4,833	—	—	4,833
5-9	3,270	66	19	3,355
10-14	5,133	41	9	5,183
15-19	9,530	12	2	9,534
20-24	3,276	—	3	3,279
over 24	983	186	21	1,190
Total	27,017	305	54	27,376

Sources:
Freight cars from AAR, Car Data File, as of August 1969. Locomotives from *Annual Report* Form A of individual railroads submitted to the ICC.

TABLE 18

INTERCITY FREIGHT TRAFFIC IN THE UNITED STATES *

1940 - 1969

(Millions of ton-miles)

Year	Railroads †	Motor carriers ‡	Great Lakes ‖	Rivers and canals	Oil pipe lines	Air carriers	Total
1940	334,606	126,636	97,583	41,893	114,916	235	915,877
1950	596,960	372,860	111,607	51,657	329,175	318	1,862,637
1951	655,353	388,012	119,986	¶ 62,232	352,115	379	1,178,075
1952	623,373	394,607	106,530	63,837	357,502	415	1,144,264
1953	614,199	417,163	127,383	¶ 75,956	369,884	413	1,204,998
1954	556,557	413,223	91,375	¶ 82,504	379,203	397	1,123,261
1955	631,385	223,254	118,845	97,663	203,244	481	1,274,972
1956	655,891	268,046	110,665	109,313	229,959	563	1,355,237
1957	626,222	254,174	117,231	114,561	222,728	572	1,335,488
1958	558,738	255,564	79,885	109,131	211,289	579	1,215,166
1959	582,497	278,934	79,880	116,679	226,991	739	1,285,720
1960	579,130	295,693	99,468	120,785	238,626	778	1,334,270
1961	569,997	296,695	86,819	122,887	233,172	895	1,310,295
1962	599,977	309,407	90,069	133,060	237,723	1,289	1,371,485
1963	629,337	336,170	95,291	138,881	253,431	1,296	1,454,406
1964	666,207	356,298	105,912	144,253	268,655	1,504	1,542,829
1965	709,700	359,219	109,609	152,912	306,393	1,910	1,638,842
1966	750,762	386,917	115,950	164,529	332,916	2,252	1,747,376
1967	731,216	389,500	106,809	174,583	361,061	2,592	1,764,761
1968	756,000	406,300	112,073	179,337	391,300	2,900	1,848,710
1969 #	780,000	404,000	116,000	186,000	411,000	3,300	1,900,300

* Includes intercity freight traffic of private as well as contract and common carriers, except deep-sea coastwise and intercoastal outside U.S. domestic waters.

† Ton-miles of freight, express, and mail of all line-haul railroads and electric railways.

‡ Highway ton-miles include movements between cities and between rural areas and urban areas; rural-to-rural movements, city deliveries and city movements to or from contiguous suburbs are omitted.

‖ Includes Canadian and overseas traffic on the Great Lakes.

¶ New coverage accounted for increases over the preceding year of 4.3 billion ton-miles in 1951, 6.6 billion in 1953, and 6.7 billion in 1954. Thus, the table indicates a greater increase in traffic on rivers and canals than actually occurred.

Preliminary.

Sources:

1940-1958 ICC, *Intercity Ton-Miles, 1939-1958*, Statement No. 6103, page 4 (April 1961).

1959-1965 ICC, *Transport Economics*, page 5 (Nov.-Dec. 1967).

1966 *82nd Annual Report of the Interstate Commerce Commission*, page 86.

1967-1968 *83rd Annual Report of the Interstate Commerce Commission*, page 87, except that the data for Great Lakes and rivers and canals have been derived from annual editions of U.S. Corps of Engineers, *Waterborne Commerce in the United States*, part 5, table 6, National Summaries. The total has been derived from both sources.

1969 Preliminary: Transportation Association of America, *Transportation Facts & Trends*, page 8 (7th ed. April 1970).

Separation of water carrier ton-miles for all years has been tabulated from U.S. Corps of Engineers, *Waterborne Commerce in the United States*.

TABLE 19

DISTRIBUTION OF INTERCITY FREIGHT TRAFFIC IN THE UNITED STATES, EXCLUDING OIL PIPELINES *

1940 - 1969

(Ton-miles)

Year	Railroads †	Motor carriers ‡	Water carriers ‖	Air carriers	Total
1940	53.3%	26.3%	20.3%	0.1%	100.0%
1941	52.9	27.5	19.5	0.1	100.0
1942	52.9	27.3	19.7	0.1	100.0
1943	52.4	28.0	19.5	0.1	100.0
1944	52.3	28.0	19.6	0.1	100.0
1945	53.2	27.0	19.7	0.1	100.0
1946	53.1	26.9	19.8	0.2	100.0
1947	52.1	27.7	20.0	0.2	100.0
1948	52.4	27.5	19.9	0.2	100.0
1949 #	52.6	27.2	20.0	0.2	100.0

* Includes intercity freight traffic of private as well as contract and common carriers, except deep-sea coastwise and intercoastal traffic outside U.S. domestic waters.

† Ton-miles of freight, express and mail of all line-haul railroads and electric railways.

‡ Highway ton-miles include movements between cities and between rural areas and urban areas; rural-to-rural movements, city deliveries and city movements to or from contiguous suburbs are omitted.

‖ Includes rivers and canals, as well as Canadian and overseas traffic on the Great Lakes.

Preliminary.

Source:

Compiled from Transportation Association of America, *Transportation Facts & Trends*, page 3 (7th ed. April 1970).

TABLE 20

CROSS TIES AND RAIL LAID IN REPLACEMENT

Class I Railroads

1960 - 1968

Year	Gross ton-miles * (millions) 1	Cross ties laid in replacement (thousands) 2	Tons of rail laid in replacement * (thousands) New 3	New & relay 4
Avg. 1940-44	1,362,501	46,587	1,393	2,616
Avg. 1945-49	1,987,371	37,178	1,552	2,789
Avg. 1950-54	1,861,633	28,576	1,182	2,207
1955	1,862,155	24,149	943	1,890
1956	1,891,008	23,646	855	1,731
1957	1,814,506	22,082	771	1,592
1958	1,644,489	16,030	406	921
1959	1,687,502	16,423	471	1,012
1960	1,668,697	14,319	354	915
1961	1,628,524	12,019	288	758
1962	1,679,696	13,428	306	823
1963	1,721,226	13,667	367	947
1964	1,784,391	14,758	377	1,009
1965	1,835,826	14,780	427	1,022
1966	1,913,295	15,324	551	1,108
1967	1,866,075	15,063	420	987
1968	1,884,284	17,214	514	1,075

* Includes locomotives, tenders, cars, cabooses in freight and passenger service.

* Short tons.

Sources:

Column 1: ICC, *Statistics of Railways in the United States*, table 158, 1940-1955; ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1954-1955 and table 162 for 1956-1968.

Column 2: ICC, *Transport Statistics in the United States* (*Statistics of Railways in the United States* prior to 1954), table 93.

Columns 3 and 4: ICC, *Transport Statistics in the United States* (*Statistics of Railways in the United States* prior to 1954), table 92.

The 1968 entries in columns 2, 3 and 4 have been revised to include New Haven data.

TABLE 21

CROSS TIES AND RAIL LAID IN REPLACEMENT AND IN NEW TRACK

Class I Railroads

1960 - 1968

Year	Cross ties: Laid in previously-constructed track and in new lines and extensions (thousands) 1	Cross ties: Total in track at end of year * (thousands) 2	Cross ties: Years required to replace at Col. 1 rate 3=2÷1	Rail: Rail-miles of new rail laid in replacement and in new track 4	Rail: Miles of rail in place at end of year (thousands) 5	Rail: Years required to replace at Col. 4 rate 6=5÷4
Avg. 1940-44	49,850	999,525	20	13,687	717	52
Avg. 1945-49	40,076	992,410	25	14,850	711	48
Avg. 1950-54	31,794	991,058	31	11,314	707	62
1955	21,173	982,806	46	6,907	700	79
1956	27,324	976,880	36	8,102	696	86
1957	25,123	970,721	39	7,832	692	88
1958	17,722	963,112	54	3,850	689	179
1959	18,267	963,200	53	4,457	685	154
1960	16,417	955,275	58	3,520	682	194
1961	13,426	951,376	71	2,636	677	257
1962	15,306	942,242	62	2,803	670	239
1963	15,130	935,107	62	3,641	666	183
1964	16,546	930,023	56	3,428	661	193
1965	16,982	913,948	54	4,001	650	162
1966	17,699	909,337	51	5,396	647	120
1967	17,458	910,661	52	4,421	646	146
1968	19,092	907,123	48	4,936	645	131

* Excludes switch and bridge ties which occupy about 7 percent of total track.

Sources:

Columns 1 and 2: ICC, *Transport Statistics in the United States* (*Statistics of Railways in the United States* prior to 1954), table 93.

Column 4: Derived from ICC, *Transport Statistics in the United States* (*Statistics of Railways in the United States* prior to 1954), table 92.

Entries in columns 1, 2 and 4 for 1968 have been revised to include New Haven data.

Column 5: ICC, *Transport Statistics in the United States* (*Statistics of Railways in the United States* prior to 1954), table 118 (1940-1962) and table 1 (1963-1968).

Columns 3 and 6 are calculated.

TABLE 22

UNIT COSTS AND UNIT REVENUES

Class I Railroads

First Quarter 1970 and 1969

Item	3 months ended March 31: 1970	1969
1. Gross ton-miles, excl. loco. (billions)	* 413.6	404.9
2. Operating expenses, rents and taxes (excluding Federal income taxes) (millions)	$2,752.9	$2,568.1
3. Fixed and contingent charges (millions)	* 145.0	132.8
4. Total expenses (2+3) (millions)	2,897.9	2,700.9
5. Operating revenues (millions)	2,824.6	2,740.7
Average per 1,000 GTM:		
Expenses, etc.	$ 7.01	$ 6.67
Revenues	6.83	6.77
Revenue margin	(.18)	.10

* Partially estimated. (See source below.)

Source:

Train and Yard Service, Form OS-A, and *Revenues and Expenses—Railroads*, Form R&E, reports of individual railroads submitted to the ICC, except that Item No. 1 includes estimate for one road, and Item No. 3 is estimated on basis of prior trends.

TABLE 23

INDICES OF RAILROAD FREIGHT CHARGES AND CONSUMER PRICES

1955 - 1969

(1955 = 100)

Year	Revenue per ton-mile 1	ICC Freight rate index 2	Consumer prices 3
1955	100	100	100
1956	101	104	101
1957	105	109	105
1958	107	113	108
1959	105	109	109
1960	102	107	111
1961	100	106	112
1962	98	104	113
1963	96	101	114
1964	94	99	116
1965	92	97	118
1966	92	96	121
1967	93	97	125
1968	96	* 101	130
1969	98	* 104	137

* Preliminary.

* Estimated.

Sources:

Column 1: ICC, *Transport Statistics in the United States*, Section A-1 Summary for 1955, tables 160 and 162 for 1956-1968. The 1969 data from ICC, *Revenue Freight Statistics of Class I Line-Haul Railroads in the United States*, Statement No. Q-220 (OS-B), and ICC, *Operating Revenues and Operating Expenses of Class I Railroads in the United States*, Statement No. Q-100 (R&E).

Column 2: ICC, *Transport Economics*, page 9, June 1969, except that 1969 is estimated.

Column 3: Calculated from reports prepared for the Joint Economic Committee by the Council of Economic Advisers, *Economic Indicators*, page 28, December 1966 and January 1970 editions.

TABLE 24

PIGGYBACK LOADINGS

Class I Railroads

1955 - 1969

Year	United States 1	Eastern District 2	Southern District 3	Western District 4
1955	168,150	n.a.	n.a.	n.a.
1956	287,783	102,646	1,617	183,520
1957	349,065	130,211	6,155	112,699
1958	278,071	139,070	8,903	130,098
1959	416,508	204,010	10,687	201,811
1960	554,115	263,017	21,128	269,170
1961	591,266	299,605	37,749	253,992
1962	706,441	369,940	64,783	271,818
1963	797,474	387,432	101,321	308,721
1964	990,748	434,039	122,329	334,180
1965	1,034,377	490,872	164,043	379,462
1966	1,162,751	539,233	193,055	430,463
1967	1,207,242	539,480	208,985	458,797
1968	1,337,149	589,092	236,756	511,301
1969	1,344,123	559,944	259,920	524,259

Source:

Car Service Division, AAR.

APPENDIX B

RAILROAD FREIGHT TRAFFIC PROJECTIONS: 1970 - 1980

While Gross National Product in constant dollars increased by 124 percent from 1949 through 1969, total intercity ton-miles handled by all modes of transportation increased 107 percent and railroad ton-miles by 46 percent. In 1969, railroads handled 41.1 percent of the 1,900 billion intercity ton-miles. (Annual totals for ton-miles are set forth in Appendix A, Table 16.)

In the latter part of the postwar period, growth rates have accelerated and railroads have participated more fully in such growth. During the past eight years, GNP and intercity ton-miles increased at average annual rates of 4.9 percent and 4.8 percent, respectively, while the average growth rate for railroad traffic was 4.0 percent.

While the volume of railroad freight traffic in a future year cannot be predicted with certainty, statistical projections can be made to illustrate what the volume would be under various sets of assumptions. Such projections do serve to indicate possible magnitudes of greater freight traffic volume, if the economy continues to grow and the railroads maintain their present share of intercity traffic.

The statistical projections at right have been calculated on alternative assumptions of annual increases of 2 percent, 3.5 percent and 5 percent in total intercity ton-miles. The railroads' share under each alternative was projected at 4.1 percent of the total market.

The resulting calculations indicate that ton-miles in 1980 would range between 971 billion and 1,336 billion. For the purposes of this report, the 3.5 percent annual growth was used. However, should the economy continue to advance at the 1961-1969 rate, the annual increase in traffic would be 34 percent greater.

In addition to freight ton-miles of Class I carriers, the rail figures include relatively small volumes of freight handled by other line-haul railroads and electric railways and an allowance for ton-miles of mail and express traffic.

RAILROAD TON-MILE PROJECTIONS: 1970-1980

Growth rate and year	Total intercity ton-miles (billions)	Railroad ton-miles (billions)
2 percent growth rate		
1969	1,900	780
1970	1,938	797
1971	1,977	813
1972	2,016	829
1973	2,057	843
1974	2,098	862
1975	2,140	880
1976	2,183	897
1977	2,226	915
1978	2,271	933
1979	2,316	953
1980	2,362	971
3.5 percent growth rate		
1969	1,900	780
1970	1,967	808
1971	2,035	836
1972	2,107	866
1973	2,180	896
1974	2,257	928
1975	2,336	960
1976	2,417	993
1977	2,502	1,028
1978	2,590	1,064
1979	2,680	1,101
1980	2,774	1,140
5 percent growth rate		
1969	1,900	780
1970	1,995	820
1971	2,095	861
1972	2,199	904
1973	2,309	949
1974	2,425	997
1975	2,546	1,046
1976	2,673	1,099
1977	2,807	1,154
1978	2,948	1,212
1979	3,095	1,272
1980	3,250	1,336

APPENDIX C

A PROPOSED MODERNIZATION PROGRAM FOR THE RAILROAD INDUSTRY

TABLE 1
FINANCIAL NEEDS FOR EQUIPMENT, PLANT, AND TRACK: 1970-1980

	Freight Cars				Freight Locomotives						
Year	1 Total new and rebuilt cars required	2 Total cars owned and leased	3 Purchase cost of cars	4 Total cost including bottlenecks	5 Total locomotive units required	6 Total locomotive units at end of year	7 Purchase cost of new locomotives	8 Total cost including bottlenecks	9 Road and other items excluding track	10 Rail and tie installations	11 Total cols. 4, 8, 9 and 10
1970	108,764	1,466,954	$1,522,696,000	$1,622,696,000	1,963	25,994	$490,750,000	$323,750,000	$500,000,000	$528,541,000	$3,176,987,000
1971	109,339	1,496,293	1,530,746,000	1,630,746,000	1,970	26,248	492,500,000	327,500,000	500,000,000	528,541,000	3,186,787,000
1972	109,926	1,526,219	1,538,964,000	1,638,964,000	1,976	26,508	494,000,000	329,000,000	500,000,000	528,541,000	3,196,505,000
1973	110,524	1,556,743	1,547,136,000	1,647,136,000	1,983	26,775	495,750,000	330,750,000	500,000,000	528,541,000	3,206,627,000
1974	111,135	1,587,878	1,555,890,000	1,680,890,000	1,990	27,049	497,500,000	339,500,000	550,000,000	528,541,000	3,298,931,000
1975	111,758	1,619,636	1,564,612,000	1,689,612,000	1,997	27,330	499,250,000	341,250,000	550,000,000	528,541,000	3,309,403,000
1976	112,393	1,652,029	1,573,502,000	1,698,502,000	2,004	27,618	501,000,000	343,000,000	550,000,000	528,541,000	3,320,043,000
1977	113,041	1,685,070	1,582,574,000	1,707,574,000	2,012	27,914	503,000,000	345,000,000	600,000,000	528,541,000	3,381,115,000
1978	113,701	1,718,771	1,591,814,000	1,741,814,000	2,020	28,218	505,000,000	355,000,000	600,000,000	528,541,000	3,425,355,000
1979	114,375	1,753,146	1,601,250,000	1,751,250,000	2,028	28,530	507,000,000	357,000,000	600,000,000	528,541,000	3,436,791,000
1980	115,063	1,788,209	1,610,882,000	1,760,882,000	2,036	28,850	509,000,000	359,000,000	600,000,000	528,541,000	3,448,423,000
Total	1,230,019		$17,220,266,000	$18,570,266,000	21,979		$5,496,750,000	$3,952,750,000	$6,050,000,000	$5,813,951,000	$36,186,967,000

TABLE 2
CASH REQUIREMENTS FOR CAPITAL PROGRAMS AND RAIL AND TIE INSTALLATIONS: 1970-1980
(Millions)

	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Equipment Payments:											
Cash outlays, debt retirement and down payments	$ 765.5	$ 874.7	$ 971.6	$1,066.2	$1,208.3	$1,313.9	$1,419.6	$1,508.8	$1,619.7	$1,671.3	$1,746.7
Interest payments for equipment obligations	279.2	418.7	548.4	668.9	780.3	882.0	974.0	1,056.8	1,130.9	1,197.1	1,256.5
Interest payments on present non-equipment long-term debt	292.8	286.4	279.5	275.3	283.9	287.6	291.3	295.5	299.7	303.8	308.5
Capital expenditures for roadway and structures (excluding rail and tie outlays)	500.0	500.0	500.0	500.0	550.0	550.0	550.0	600.0	600.0	600.0	600.0
Rail and tie outlays	528.5	528.5	528.5	528.5	528.5	528.5	528.5	528.5	528.5	528.5	528.5
Total	$2,326.0	$2,588.3	$2,819.0	$3,038.9	$3,351.0	$3,562.0	$3,763.4	$3,989.6	$4,178.8	$4,300.7	$4,440.2

Verified Statement No. 4
Affiant: R. R. Manion

[Exparte No. 305, Filed April 22, 1974,
Interstate Commerce Commission]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

IN SUPPORT OF RAILROADS' PETITION
FOR 10 PERCENT INCREASE IN
FREIGHT RATES AND CHARGES

Verified Statement of

R. R. Manion
Vice President
Operations and Maintenance Department
Association of American Railroads

April 1974

My name is R. R. Manion. Since September 1964, I have been Vice President-Operations and Maintenance Department of the Association of American Railroads. Our offices are at 1920 "L" Street, N.W., Washington, D.C. 20036.

This testimony is afforded in support of the application of the railroads for a general increase in freight rates and charges of ten percent. This increase will help the railroads meet their needs for funds for maintenance and capital improvements.

There is widespread concurrence in the railroads' need for large sums of money to meet investment requirements. In July 1972 the Department of Transportation published the "1972 National Transportation Report—Present Status—Future Alternatives". In Table 6 of that Report there are presented the "Estimated private sector investment requirements, 1971-80" in millions of dollars in 1969 prices. The railroad industry's ASTRO estimate of $32,900 million is shown as the industry estimate for expansion and replacement, assuming the retention of the railroad's present market share. DOT made an independent estimate, using a uniform capital stock method as its estimating procedure for all modes, and concluded that the expansion and replacement investment requirements of the railroads for that period of time would be $31,234 million. This was recognized as involving ". . . substantial agreement between the two estimates," (p. 164). The DOT Report concluded that:

> "Over the next 10 years railroads will probably require large capital outlays to operate effectively, but these do not appear to be forthcoming without changes in regulatory practices and some Government assistance."

The industry, as the testimony of the executives of the carriers makes plain, is in agreement that a much improved plant can be provided. It is my purpose here to give some details on how that improvement can be accomplished and what capital resources are needed to meet the cost.

• • • • •

V.
The Railroads Face an Immediate Need to Upgrade Track Structures and Require the Funds to Accomplish This

Track structures are also one of the physical improvements for which it is difficult to find adequate financial resources. Nevertheless, the railroads have entered a new era as they endeavor to meet Track Safety Regulations.

1. *Track Safety Regulations.*

Parts of these regulations become effective on different dates. The rail requirements went into effect in October 1972. The tie and geometry requirements became effective in October 1973. It is possible at this point to conclude that the speed requirements of the standards are having an adverse effect on railroad service. The relatively low level of railroad earnings does not provide enough income on many railroads to permit them to maintain track to a high enough standard to avoid the obligation to establish slow orders or general speed restrictions.

2. *Estimates of Future Requirements.*

Set out in Attachment N is a comparison of gross ton miles with cross ties and rail, both new and relay, in replacement for the period 1946-1972. The trend shown is generally downward to a low in 1961, followed by a gradual increase to a level representing about one-half the rate of replacements immediately after World War II.

The long-term decline is generally attributed to technological advances in the quality of rail and ties, to abandonment of branch lines and multiple main track and to reduction in standards of maintenance necessitated by financial stringency.

In my judgment the railroads should now be laying cross ties in replacement at a rate of 25 million per year. They should also be putting down 1,145,000 short tons of new rail in replacement and a total of 1,910,000 short tons of new and relay rail in replacement.

The railroads provided data forming the basis for the DOT Needs Study with respect to track structures for period 1971-1980. The data shown was as follows:

(Billions)

	Trend Level	ASTRO Level	High Performance Level
Track	$4.5	$5.2	$7.9

In "A Report on Railroad Track and Roadway" prepared by Task Force II and submitted to the Labor and Management Committee on April 23, 1971, there were identified the higher levels of material, man power, and money necessary to build the railroads of the 1980's and 1990's. The Task Force was made up of representatives from the AAR, the railroad labor unions and engineering offices of three of the railroads. The Task Force concluded that current replacement of road cross ties at the rate of approximately 17 million per year, or on a life cycle of 53 years was inadequate. They found that the desired replacement rate should be 26 million per year in order to achieve a 35-year life cycle. The Task Force found that from 1958 through 1970 there had accumulated a deficiency of 11,000 miles in new rail that should have been laid. It determined that 102,000 miles of primary main track should be placed at high standards and that, since 25,000 track miles of welded rail was already in place, some 77,000 miles should be furnished with welded rail when new rail is laid. The Task Force projected that this work should be accomplished in a 10-year period. The requirements are set out in Table on Attachment O.

Whatever estimate is employed, the conclusion reached is that the railroads need to be doing more work on the track structures. That conclusion is sound even if one limits the area of examination to the core or major routes of the railroad system. The longer the job is put off, the greater the deferred maintenance that the railroads, the government and the public will have to confront at some time in the future. It is of critical importance that added track work be undertaken before Track Safety Regulations force a slow down in service. The proposed increases will help.

• • • • •

[No. 279, Filed May 24, 1974,
Interstate Commerce Commission]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Ex Parte No. 305

NATIONWIDE INCREASE OF TEN PERCENT
IN FREIGHT RATES AND CHARGES, 1974

STATEMENT OF POSITION OF THE
NATIONAL INDUSTRIAL TRAFFIC LEAGUE

with respect to

TARIFF OF INCREASED RATES AND CHARGES
X-305, WITH EFFECTIVE DATE OF JUNE 5, 1974

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE
425 - 13th Street, N.W.
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By: /s/ JOHN F. DONELAN
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J. E. PHELAN, *Chairman, Railroad Rates and Practices Committee*

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Due Date: May 24, 1974

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Ex Parte No. 305

NATIONWIDE INCREASE OF TEN PERCENT
IN FREIGHT RATES AND CHARGES, 1974

STATEMENT OF POSITION OF THE
NATIONAL INDUSTRIAL TRAFFIC LEAGUE

with respect to

TARIFF OF INCREASED RATES AND CHARGES
X-305, WITH EFFECTIVE DATE OF JUNE 5, 1974

Introductory Comment

This Statement of Position in behalf of The National Industrial Traffic League (hereinafter League) is directed to the Tariff of Increased Rates and Charges X-305 (hereinafter Tariff X-305), issued May 6, 1974 with an effective date of June 5, 1974.

On April 22, 1974 the railroads filed a document entitled "Petition of United States Railroads For Permission To File A 10 Percent Increase In Freight Rates And Charges To Be Effective on May 2, 1974". With respect to this latter Petition, the League has filed and served two pleadings: (a) a Mailgram, dated April 24, 1974, entitled "Objection Of National Industrial Traffic League To Granting Of Railroads' Petition Herein" and (b) Supplemental Reply, dated April 29, 1974, In Opposition To The Petition Of United States Railroads For Permission To File A 10 Percent Increase In Freight Rates And Charges To Be Effective On May 2, 1974. It is the League's understanding from the fifth paragraph, page 2 of the Order in Ex Parte No. 305, entered and

served May 3, 1974, that both of the above filings are presently to be considered as part of the formal record upon which the Commission will reach its determinations with respect to Tariff X-305. In any event, the League requests that these prior filings be so considered. We incorporate the same in this filing by reference and will endeavor to avoid duplication in the Statement of Position.

• • • • •

Imposition Of Conditions With Respect To Use Of Any Increase Which May Be Authorized

A reading of the Statements accompanying the railroads' basic Petition indicates that the revenues sought by way of increased railroad freight rates and charges would not be limited, as such, to covering increased operating costs. Rather, there is frequent reference to the use of such funds to improve the railroads' plant and to enable the railroads to provide better transportation service to the shipping public.

In directing comments on this subject, the League is not to be understood as assuming in advance authorizing action, in whole or in part, by the Commission with respect to Tariff X-305. However, past experience suggests that the League should express itself on this important subject.

Earlier, we referred to action by the League's members at their 1970 Annual Meeting. Another principle which the League adopted at that meeting under the heading "The Railroad Industry—A Look Toward The Future" was the following policy statement which seems particularly relevant to Tariff X-305 and the instant proceeding. The resolution, in pertinent part, was as follows:

> Insist that the ICC, in approving any future ex parte increases, include specific allocation for such increased revenue for:
>
> —Right of way improvements, particularly maintenance and repair of track and structures.

> —Service improvement, particularly reduction of time required for interchange of rail cars between railroads."

The League will not presume to tell the Commission the precise manner in which the above objectives should be accomplished. The League does suggest that the shipping public is entitled to a "follow through" to the extent that increases in railroad rates and charges have been authorized in the light of representations by the railroads that the carriers with part of the revenues derived would effect right-of-way improvements, service improvements, and the like. Particularly in view of the number and magnitude of recent Ex Parte general freight rate increases as well as the instant Petition embodied in Tariff X-305, by order the Commission should provide for protection of the shipping public by imposing an obligation upon the railroads to carry out their undertakings with respect to right-of-way improvements and service improvements.

• • • • •

[P. No. 190, Filed May 22, 1974,
Interstate Commerce Commission]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

PROTEST AND PETITION FOR SUSPENSION

EFFECTIVE DATE:

June 5, 1974

TARIFF REFERENCE:

TARIFF OF INCREASED RATES AND CHARGES, X-305, Issued by TPO Z. C. Berry, 151 Ellis Street, N.E., Atlanta, Georgia 30303, et al.

THE PILLSBURY COMPANY
608 Second Avenue South
Minneapolis, Minnesota 55402

BY: Roger A. Hackbart
General Traffic Manager
Registered Practitioner

DUE DATE: May 24, 1974

BEFORE THE

INTERSTATE COMMERCE COMMISSION
PROTEST AND PETITION FOR SUSPENSION
"Tariff of Increased Rates and Charges X-305"

Comes now protestant, The Pillsbury Company, and prays this Commission may suspend and investigate the above schedule, and for cause therefore shows:

• • • •

IV

It is the position of protestant in this proceeding that if the carriers are to receive increased revenue to provide "adequate and efficient" railway transportation service, some means must be found to ensure that adequate and efficient service is in fact rendered. Protestant submits that the Commission must establish reasonable standards of service and that the maintenance of those standards made a prerequisite for the granting of the carriers' petition.

It is further the position of this protestant that the carriers have not shown that economically they warrant a 10% rate increase. This is evidenced by the tremendous increase in net income of one representative railroad (BN) and by the misrepresentation inherent in the use of industry-wide rate of return on investment figures.

It is still further the position of this protestant that this Commission must insure that increased revenue sucked from the shipping public on the basis of need to maintain track, road bed, equipment, increase amount of equipment, improve yard facilities, etc., is indeed used for these purposes. Shippers must be assured that increased revenue derived from general rate increases is actually used to do what the carriers say they need to do. Increased revenues disappear through the medium of "Generally Accepted Accounting Principles" and the ship-

per continues to face car shortages and inadequate service. The Commission should demand of each individual railroad an accounting of how the increased revenue was used to improve and maintain track, road bed, obtain more cars, etc. The shipping public should be able to measure individual railroad accomplishments in these specific areas rather than be confused by financial figures that reveal little. The shipping public has a right to know how many miles of road bed an individual railroad must upgrade before the facilities are in adequate condition. How many cars does an individual railroad need to own? What future plans do individual railroads have to achieve "adequate" transportation goals? Mere spending does not insure that the spending is wise or will accomplish stated goals of providing adequate and efficient transportation. We suffer through round after round of increases without ever seeing "the light at the end of the tunnel".

CONCLUSION

We request that the Commission suspend and institute an investigation into the lawfulness of the proposed increase. We request that as a portion of that investigation the Commission take evidence and make findings on the need to establish reasonable standards for efficient and adequate transportation service with appropriate penalties for failure to adhere to those standards.

Respectfully submitted,

ROGER A. HACKBART

[P. No. 176, Filed May 23, 1974,
Interstate Commerce Commission]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

EX PARTE 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Verified Statement Of
William K. Smith
In Behalf of General Mills, Inc.

DAVID M. SCHWARTZ
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William K. Smith
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DUE DATE: May 24, 1974

BEFORE THE
INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT
IN FREIGHT RATES AND CHARGES, 1974

Verified Statement Of
William K. Smith

Introductory Statement

On April 22, 1974, the railroads filed a Petition to increase freight rates and charges by 10 percent, subject to a few exceptions, within and between the Eastern, Southern and Western Territories, on short notice. On April 30, the Interstate Commerce Commission (hereinafter referred to as Commission) denied the "short notice" request. Subsequently, the Commission issued an order authorizing the filing of a 10 percent increase tariff. and specified the procedures to be followed to investigate the justification for that increase.

This is the Verified Statement of William K. Smith, for General Mills, Inc., in which requests are made for specific considerations by the Commission in its evaluation of the railroads' Ex Parte 305 Petition.

I. *Interest of General Mills*

General Mills, Inc., (hereinafter referred to as GMI) is organized under the laws of the State of Delaware and is engaged in the manufacture and distribution of foods, chemicals, clothing, crafts, games and toys, and jewelry,

and in the restaurant business. Headquarter offices are located at 9200 Wayzata Boulevard, Post Office Box 1113, Minneapolis, Minnesota, 55440.

GMI's interest in Ex Parte 305 is derived from:

its annual expenditure of approximately $55,000,000 for railroad carload services;

its concern for a financially sound and progressive railroad system, privately owned and managed;

its concern that the revenue needs of many railroads have not been met by Ex Parte general rate increases of the past and will probably not be met by this Ex Parte proceeding;

its concern that our railroad system continues to be inadequate to meet industries' requirements of freight car quality, freight car availability, and in-transit reliability; and

its belief that in Ex Parte 305 we are "walking down an insufficently productive path" making the same wrong turns as in past attempts for financial improvement, and we will continue on that path until the Commission successfully concludes,

Ex Parte 270—Investigation of Railroad Rate Structure
Ex Parte 270—(Sub 2) Investigation of Railroad Freight Service, and
Ex Parte 271—Investigation of Net Investment Railroad Rate Base

II. *General Mills' "Findings" From The Railroads' Presentation*

GMI's review of the railroads' Ex Parte 305 Petition and Verified Statements finds:

a. The main justification for the 10 percent increase in rail freight rates lies in the stated need to raise individual railroad company earnings and rate-of-return—as contrasted to increases intended to cover rises in wages, salaries, and prices of materials.

b. The railroads' 1973 net earnings and rate-of-return are favorable only in comparison with the deeply depressed levels of other recent years and are lower than the levels of 20 years ago—despite rail tonnage, ton-miles, and revenues being at the highest levels in history.

c. There is a massive gap between the capital investment which the railroads should be making and their ability to make such investments with current revenue/expense levels.

GMI believes the Ex Parte 305 increases should be permitted to become effective (without suspension but subject to investigation and refund) as a means toward overcoming the gap between actual and needed productive investment in the railroad system. But we temper that support for the increase with two "proposals" and one "question."

• • • • •

C. *Segregation And Allocation Of Funds From General Increases*

As indicated earlier in this Statement, GMI believes that the Commission must carefully examine the information submitted by the railroads in this proceeding with a view toward identifying and separating out the amounts required to meet increases in operating expenses from those required to meet essential capital and service improvement needs. While information submitted by the railroads in this proceeding clearly indicates that the increases being sought are largely for meeting the latter requirements, this separation should still be undertaken. Likewise, for the reasons already stated, the Commission should estimate the kind and amount of these capital requirements and the economic contribution that they can be expected to make to the railroad system and its individual parts.

As an important and final consideration, the Commission must take steps to assure GMI and other shippers that their expectations as to the effect of this increase are not dissipated. As noted above, the railroads' major

justification for this pending increase is the need for more revenue to improve the physical plant and to meet other pressing capital and service improvement needs such as deferred track and equipment maintenance.

GMI agrees that these needs are pressing and must be met if the railroads are to perform their vital role in the carriage of freight. At the same time, GMI cannot ignore the fact, amply shown in earlier portions of this Statement, that there is no correlation between capital improvement programs and general increases in rates and that substantial portions of these increases are being paid out in dividends rather than retained.

If, as the railroads urge, increases in rates are needed to provide badly needed capital funds, GMI believes that it is timely and appropriate to hold the railroads to their Plan and, through the establishment of an escrow account or devices having a like purpose, to insist that some or all of the amounts secured through this increase be, in fact, used for capital needs or service improvements. In the absence of such an approach, there is simply no assurance that GMI and other shippers' justifiable expectations, as to the potential benefits of this increase, will be met.

• • • • •

BEFORE THE
INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 305
NATIONWIDE INCREASE OF TEN
PERCENT IN FREIGHT RATES
AND CHARGES, 1974

PETITION OF THE CHESAPEAKE AND
OHIO RAILWAY COMPANY, THE BALTIMORE
AND OHIO RAILROAD COMPANY AND
WESTERN MARYLAND RAILWAY COMPANY
FOR RECONSIDERATION OF THE
COMMISSION'S ORDER OF JULY 22, 1974

The Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and Western Maryland Railway Company, hereinafter referred to as Chessie System, seek reconsideration of the Commission's Order of July 22, 1974 for the reason that under the Commission's definitions of deferred maintenance and delayed capital improvements they will be unable to apply any of the increased revenues derived from the Ex Parte No. 305 proceeding (other than those earmarked for increased material and supply costs) to any projects now scheduled or which may be scheduled in the foreseeable future.

The Commission has defined deferred maintenance to be "accrued deterioration" in a railroad's plant or equipment which has rendered its services to shippers "partially or wholly inadequate and/or has resulted in diminishing the railroads' competitive ability."

Chessie System's expenditures for maintenance of plant and equipment do not in any sense qualify under the Commission's definition. Chessie System has no deferred

maintenance within the meaning of the term as used by the Commission. Chessie's plant and equipment are kept in regular repair and its maintenance program is adequate to meet the needs of its shippers considering the volume and frequency of their shipments.

Chessie System's expenditures for capital improvements likewise also do not qualify under the Commission's definition which specifies "delayed" capital improvements which were "actually planned" but not undertaken because "funding or financing was not available or projected to be available through June 30, 1975."

No worthwhile project on Chessie System designed to improve its transportation service to the shipping public has ever been deferred because financing or funding was not available. None will be as long as Chessie System earnings are at levels adequate enough to attract capital. Chessie System has never stinted in its expenditures to provide adequate and efficient transportation service to its customers.

Furthermore, the definition excludes improvements for which expenditures were committed on or before June 1, 1974. Prior to that date, on May 13, 1974, the respective Boards of Directors of The Baltimore and Ohio Railroad Company and The Chesapeake and Ohio Railway Company authorized massive capital expenditure programs totaling $78,874,143 for the B&O and $45,014,426 for C&O, a grand total of $123,888,569. The programs include, among other things, the acquisition by B&O of 3,000 100-ton hopper cars and 62 3,000 horsepower 4-axle general purpose diesel locomotives. C&O is to acquire an addiitonal 2,000 100-ton hopper cars and 10 3,000 horsepower diesel locomotives.

Chessie System had an adequate car supply and other facilities for hitherto normal levels of traffic—i.e., levels in existence prior to the onset of the energy crisis. The ecquisition of the additional equipment mentioned above is necessary to meet very substantial increases in coal production at C&O/B&O origin mines which have just opened or which will open in the future. Starting in June 1974, a total of 55 new mines began to come on line at C&O/B&O origin points. The total production of these

new mines will exceed 28 million tons annually. Twenty of the total group of 55 new mines have already begun production.

The commitment to acquire the new equipment was made, of course, in anticipation that Chessie System's earnings would be at levels sufficient to support the programs. The Boards acted with full assurance from management that the necessary financing would be forthcoming. They would not have approved the program without such assurances, for Boards do not act on programs of this magnitude on the basis of contingencies. It should be noted further that the commitments by the Boards were made after the filing of the railroads' petition of April 22, 1974 which initiated Ex Parte No. 305.

However, under the Commission's definition, these significant expenditures do not qualify because (a) the money was committed prior to June 1, 1974, and (b) the program had not been deferred because funding or financing was not available.

On June 17, 1974, the respective Boards of Directors of the B&O and C&O authorized additional capital expenditures totaling $25,427,995 for B&O and $19,547,995 for C&O covering the acquisition of additional new equipment. These, too, would not qualify under the Commission's definition because the projects cannot be said to have been deferred for the reason that funding or financing was not available. These are new projects designed to handle new traffic.

As previously stated, Chessie System has never lacked financing for those capital expenditures which it deemed necessary to provide adequate and efficient transportation service for its customers. Chessie System's customers have not suffered because the System had to defer needed capital improvements and this fortunate circumstance will continue as long as Chessie's earnings are adequate enough to attract capital.

The May and June Board actions described above tell only part of the story. Chessie System's total planned capital expenditures as announced in its July 3, 1974 letter to its shareowners are $300 million. This sum will be used to purchase 72 diesel locomotives, 10,000

coal cars and 2,714 merchandise cars. Considering the rapidly rising prices of steel and other materials, the final sum expended will be well in excess of $300 million. Further, since coal tonnage on the Chessie System is growing at a pace faster than that of other major coal hauling railroads, significant additional equipment authorizations can be expected.

Chessie System knows of no project now in planning on its system included in the $300 million program which it would have to defer because financing or funding is not available. With Chessie System's credit rating and assuming earnings are adequate, funds will be forthcoming for capital improvements albeit at extremely high interest rates.

Chessie System committed in May and June 1974 a total of $168,864,559 in expenditures for capital improvements—a sum far in excess of the revenues it expected to receive from Ex Parte No. 305. Unless it is permitted to apply these additional revenues to its May and June commitments and to the other commitments it has made in its total $300 million program, it will be unable to make use of these revenues. They will simply lie dormant in a sterile, segregated account which will result in several serious consequences both to Chessie System and the shipping public.

First, it places Chessie System at a distinct competitive disadvantage vis-a-vis other railroads, which for one reason or another have deferred maintenance or delayed capital improvements within the meaning of the Commission's Order. These lines will be able to use the additional revenues to buy cars and other equipment while Chessie System's money will lie fallow. In effect, the Order penalizes Chessie System and other efficient carriers and rewards only those railroads which are inefficient.

The Order also penalized Chessie System's customers. They must pay increased freight rates which Chessie System may not use, in turn, to make improvements in its plant and equipment for their benefit. They are, in effect, paying something for nothing. This is inflation at its worst.

Chessie System is aware of the industry petition which seeks clarification and amendment of the Commission's Order of July 22, 1974.

Chessie System is of the view that the Commission exceeded its statutory authority by conditioning the use to which the revenues derived from Ex Parte No. 305 might be applied. In doing so, it also imposed a set of conditions which simply cannot fit the problems of each and every railroad. The solution to Chessie System's problems would be met if the following additional ordering paragraph were adopted by the Commission as a part of its July 22, 1974 Order:

> "If a railroad shall have no deferred maintenance or delayed capital improvements as defined in this order, it is permitted to expend the funds generated by the authorized increases for any valid corporate purpose."

If the requested amendment is granted, the additional funds could be included in working capital, thus increasing Chessie System's bond rating and enabling it to borrow money for improvements at lower rates of interest. The Commission has said many times that it is not the manager of the railroads. Adoption of the additional ordering paragraph would constitute a firm reiteration of its own principle.

Chessie System intends to use the funds derived from Ex Parte No. 305 for capital improvements. It cannot do so, however, under the term as presently defined. Relief is essential if Chessie System is to make any use of this money. It is further requested that the Commission postpone the present reporting requirement data of August 19, 1974 pending its disposition of this petition.

Respectfully submitted,

OWEN CLARKE
CHARLES C. RETTBERG, JR.
Attorneys for Petitioners

Dated: July 30, 1974

BEFORE THE
INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

RAILROADS' SUPPLEMENTAL PETITION FOR CLARIFICATION AND MODIFICATION OF THE COMMISSION'S AND ORDERS SERVED JULY 22, AND AUGUST 12, 1974

The railroad petitioners in the above entitled proceeding respectfully request the Commission to clarify and amend its orders served July 22 and August 12, 1974 to accomplish the following two purposes:

1. To permit funds obtained from the Ex Parte 305 increase to be used for new or increased maintenance and capital improvement programs and
2. To permit bankrupt and marginal roads to use funds obtained from Ex Parte 305 increase, if necessary, to meet cash requirements for continued operation.

I.

THE PERMISSIBLE EXPENDITURES SHOULD INCLUDE THOSE FOR NEW OR INCREASED MAINTENANCE AND CAPITAL IMPROVEMENT PROGRAMS

A number of roads have in contemplation or have already undertaken new or increased maintenance and capital improvement programs that have been made pos-

sible in whole or in part by the Ex Parte 305 increases. These programs may not qualify as "deferred maintenance" or "delayed capital improvements" under the terms of the July 22 and August 12, 1974 orders because, for example, of the fact they were not deferred or delayed due to the unavailability of financing in the past. They may be programs that have become necessary due to recent increases in traffic. They may be programs to achieve improvements in service not embraced in any prior budgets and not previously planned. In these and other instances expenditure of Ex Parte 305 funds will improve service. The problem arises because of the doubt and uncertainty about the qualification of such improvement programs under the language in the July 22 and August 12 orders.

The C&O/B&O have committed their roads to the acquisition of a large number of cars and locomotives to serve new coal mines that started coming on line in June 1974. To meet the needs of this newly offered and increased traffic these roads are committed to spend $123 million for 5000 100-ton hopper cars and 12 3,000 horsepower diesel locomotives. It becomes very important that these and other roads similarly situated be in a position to use Ex Part 305 funds for the acquisition of these new and additional capital improvement programs. They should not be excluded from the use of such funds because there is no "delay" involved in the program. The shippers need this equipment and use of the funds serves the purposes for which the requested increases were asked.

The use of Ex Parte 305 increase funds for new and additional programs is consistent with the Commission's intended purposes. The order of July 22 makes it evident that the objective is to improve service. This can be accomplished by removing existing inadequacies. It can also be accomplished by new and additional programs that add "usefulness, capacity, durability and efficiency" to the railroad plant.* Shippers and the nation benefit as much from improvements to service that provide new

* Paragraph 4, Commission's Order of July 22, 1974.

levels of service in these respects as they do from removing problems created by deferred or delayed programs.

The railroads have already undertaken commitments to use Ex Parte 305 funds for maintenance and capital improvement. Plans have been drawn, programs undertaken or laid out for future accomplishment. It would be a tragic waste of money and effort for these plans and programs to be brought to a halt. Yet that is a possible consequence if the clarification and modification sought herein are not granted. The C&O/B&O have concluded that an independent notice should be issued announcing their intention to withdraw their concurrence in the Ex Parte 305 program if this relatively technical change in the reporting requirements is not made. A tariff has not as yet been filed. The goals of the industry and the Commission are therefore threatened by the withdrawal of a line because of its conviction that the present language in the orders will not permit it to make use of the Ex Parte 305 funds for its capital improvement programs. It is very important to the whole industry, to shippers and to the nation that the C&O/B&O capital improvement programs be carried out and that the whole industry be enabled to make full use of the Ex Parte 305 funds for the service improvement purposes originally projected by the Commission.

There may be a number of ways to accomplish the purpose dealt with in this section. One way would be to add the following language to the order.

> "If a railroad shall have no deferred maintenance nor delayed capital improvements within the meaning of the Commission's Orders of July 22, 1974 and and August 12, 1974 or amounts less than equal to the funds segregated in Account 716, the increased revenue derived from Ex Parte No. 305 may be committed to capital improvements required to handle increased traffic levels or for improvements in the quantity and quality of its railroad service in general."

II.

THE ORDER SHOULD BE CLARIFIED TO PERMIT BANKRUPT AND MARGINAL RAILROADS TO USE FUNDS OBTAINED FROM THE EX PARTE 305 INCREASE TO THE EXTENT NECESSARY FOR CONTINUED RAIL OPERATIONS

The railroad industry is composed of many companies which have widely differing financial situations. The orders of July 22, 1974 and August 12, 1974 treat all railroads—i.e., the relatively prosperous, the marginal and the bankrupt the same. The Commission's orders require segregation of a large part of the proceeds of the rate increase and impose stringent restrictions on its use. For railroads which are so poor that they can barely keep operating even with unrestricted use of that money and which, because of their financial situation, cannot satisfy the Commission's requirement for increased capital spending and increased maintenance expenditures, the order may well mean a cessation of operations.

The Commission's detailed requirements and regulations in respect to the reporting and use of the Ex Parte 305 revenues may, with the modification discussed elsewhere, be appropriate for application to railroads which have discretion in the use of their proceeds. However, railroads which are now in reorganization and marginal railroads which are but one step ahead of the bankruptcy courts have little discretion in the use of their cash. This serious situation was the subject of Congressional action in the Regional Rail Reorganization Act of 1973. Section 213 of that Act provides for emergency assistance to railroads in reorganization so as to permit them to continue transportation service essential to the needs of the country. In that section Congress authorized appropriation of $85 million to provide such emergency assistance. It would be inconsistent to prevent railroads in reorganization from using the

freight revenues from this increase, thereby requiring further taxpayer aid to meet the cash shortage.*

The managements of nonbankrupt marginal railroads must and do manage their cash and apply it to the most essential aspects of their operations, including maintenance, in their efforts to continue operations and to avoid the necessity of filing petitions in reorganization. An example of a railroad with an extremely serious cash problem is the Chicago, Rock Island and Pacific Railroad Company, which has lost money every year since 1964, in amounts that range from $1.4 million to $16.7 million per year. Similarly, the Missouri-Kansas-Texas Railroad Company is experiencing deficits of net income and increasing deficits of working capital. Thus, it should be clear beyond question that the CR&P and M-K-T and other railroads similarly situated *must* first use their limited funds—whether they are derived from the Ex Parte 305 increase or from other sources—for maintaining their normal operations and maintenance. Otherwise, it is obvious that deferred maintenance will simply increase.

The railroads which are in reorganization and the railroads which are not in reorganization but which are faced with critical cash shortages will apply as much of the Ex Parte 305 revenues to increased maintenance projects as their cash will allow. To this extent, they will be directing their efforts toward the laudable objective of the Commission in seeking to improve maintenance thereby improving rail service.

It is respectfully requested that the Commission's order be modified so as to permit these poor railroads to use for operating purposes as much of the increased revenues as is necessary to meet cash requirements for their continued operation. It is suggested that this objective could be accomplished by amending the order of July 22, 1974 by adding provisions such as:

---

* Only $74.8 million of that authorization has been appropriated and $25.6 million had been expended prior to the effectiveness of the Ex Parte 305 increase. The unexpended $49.2 million is not sufficient for continued operation of bankrupt railroads if the Ex Parte 305 revenues are withheld from use.

Railroads in reorganization shall be permitted to expend the funds generated by the authorized increase for operating purposes to the extent necessary to meet cash requirements for continued operation.

A railroad not in reorganization which is experiencing severe cash shortage shall be permitted to expend the funds generated by the authorized increase for operating purposes to the extent necessary to avoid curtailment of transportation services or to avoid the filing of a petition in reorganization pursuant to 11 U.S.C. Section 205(a).

Respectfully submitted,

/s/ JAMES L. TAPLEY

John W. Adams	Harry B. LaTourette
Curtis H. Berg	John P. McCall
R. W. Bridges	Don McDevitt
John J. Burchell	Thormund A. Miller
J. T. Clark	Richard J. Murphy
John A. Daily	Joseph M. O'Malley
Harry L. DeLung, Jr.	C. Harold Peterson
Louis T. Duerinck	Albert B. Russ, Jr.
R. S. M. Emrich III	Scott W. Scully
J. D. Feeney	John F. Smith
Stuart F. Gassner	James L. Tapley
Louis Harris	Wm. A. Thie
James L. Howe III	Thomas E. Tisza
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Edward A. Kaier	Walter G. Treanor
Richard W. Kienle	Donal L. Turkal
Geo. H. Kleinberger	John S. Walker
Howard D. Koontz	Sidney Weinberg
Richard D. Lalanne	Robt. E. Zimmerman

Attorneys for Petitioners

BEFORE THE
INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

REPLY OF THE CHESAPEAKE AND OHIO RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY AND WESTERN MARYLAND RAILWAY COMPANY TO THE RAILROADS' SUPPLEMENTAL PETITION OF AUGUST 16, 1974 FOR CLARIFICATION AND MODIFICATION OF THE COMMISSION'S ORDERS OF JULY 22 AND AUGUST 12, 1974

The Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and Western Maryland Railway Company, hereinafter referred to as Chessie System, file this reply to the Supplemental Petition of railroads other than Chessie System dated August 16, 1974 and seeking clarification and modification of the Commission's orders of July 22 and August 22, 1974. This reply is filed for the sole and limited purpose of clearing up certain misrepresentations in said supplemental petition as to Chessie System's position in this proceeding and Chessie's willingness to accept the supplemental petition's suggested additional condition.

We wish to state just as categorically as possible that the supplemental petition does not represent a statement of the position of the Chessie System lines in this matter. In fact, as we told the United States District Court for the Eastern District of Virginia in oral argument on August 16, 1974 in our successful motion for

an order temporarily restraining the Commission from enforcing the limiting conditions, and other conditions, as applied to us, in its orders of June 4, July 22 and August 12, 1974 in this docket, the Supplemental Petition constitutes a misrepresentation of the Chessie System position insofar as it suggests that Chessie System would be willing to accept a condition which would permit the increased revenues derived from Ex Parte No. 305 to be applied only to capital improvements required to handle increased traffic levels. This condition is unacceptable to Chessie. Our position is that the Chessie System lines should not only be entitled to use such revenues for capital improvements, but that we also be entitled to use such revenues for any valid corporate purpose. In fact, in Chessie System's petition for reconsideration filed July 30, 1974, we specifically stated that:

> "The solution of Chessie System's problems would be met if the following additional ordering paragraph were adopted by the Commission as a part of its July 22, 1974 Order:
>
> > 'If a railroad shall have no deferred maintenance or delayed capital improvements as defined in this order, it is permitted to expend the funds generated by the authorized increases for any valid coporate purpose.'
>
> "If the requested amendment is granted, the additional funds could be included in working capital, thus increasing Chessie System's bond rating and enabling it to borrow money for improvements at lower rates of interest."

The above relief was denied by the Commission by its order served August 12, 1974, and insofar as the Chessie System lines are concerned, the administrative process was then and there concluded.

Thus, Chessie System has nothing now pending before the Commission for its consideration in the Ex Parte No. 305 proceeding. Rather, we intend to pursue to a final conclusion the issues now before the three-judge

Federal Court for the Eastern District of Virginia as stated in the complaint filed in that Court.

In filing this reply, Chessie System speaks solely on its own behalf. This reply is filed only for the limited purpose stated above, and in filing it the Chessie System hereby expressly disclaims any purpose or intention to present any issue to the Commission for its determination.

Respectfully submitted,

/s/ CHARLES C. RETTBERG, JR.
OWEN CLARKE
DOYLE S. MORRIS
CHARLES C. RETTBERG, JR.
Attorneys for Replicants

Dated: August 20, 1974

BEFORE THE
INTERSTATE COMMERCE COMMISSION

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN
PERCENT IN FREIGHT RATES
AND CHARGES, 1974

OBJECTION OF THE CHESAPEAKE AND OHIO RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY AND WESTERN MARYLAND RAILWAY COMPANY TO THE JURISDICTION OF THE INTERSTATE COMMERCE COMMISSION TO REQUIRE THE APPEARANCE OF SAID RAILROADS AT THE ORAL ARGUMENT OF AUGUST 27, 1974

The Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and Western Maryland Railway Company, hereinafter referred to as Chessie System lines, object to the Commission's jurisdiction to order them to appear at the oral argument to be held in Ex Parte No. 305 on August 27, 1974, or otherwise participate in that reopened proceeding.

The limiting conditions, and the accounting and reporting conditions, of the June 4, July 22, and August 12, 1974 orders of the Commission in Ex Parte No. 305, as they applied to the Chessie System lines, became the subject matter of judicial review *before* the order of August 22, which purports, without Court approval, to reopen said proceeding as to the Chessie lines. Insofar as the Chessie System lines are concerned the subject matter of the scheduled August 27 argument is the very same subject which is now pending before the United States District Court for the Eastern District of Virginia, Richmond Division, namely Chessie System lines' objections to the limiting conditions which restrict the uses to which the additional revenues may be applied

and the related accounting and reporting conditions. As the Commission is aware, the enforcement of these conditions against the Chessie System lines has been temporarily restrained by the Court. Chessie System lines advised the Court that they desired to spend these additional funds for any valid corporate purpose rather than accept the relief prayed by certain other railroads in their petition of August 16, 1974.

Chessie System lines' appearance at the August 27 argument could be deemed to constitute a waiver of their right to a prompt and timely judicial review of said conditions as they stood on August 12, 1974, when they became administratively final upon the Commission's denial of their petition for reconsideration. *Atchison, Topeka & Santa Fe Railway Company* v. *United States*, 231 F. Supp. 422, 428. Insofar as the Chessie System lines are concerned, the subject matter of the August 27 argument was removed from the Commission's jurisdiction with the filing of their complaint in the United States District Court for the Eastern District of Virginia, Richmond Division, on August 15, 1974. Chessie System lines have taken no action subsequent thereto to resubmit the matter to the Commission. Indeed, they carefully avoided such action, witness their reply of August 20.

While they have great respect for the Commission, Chessie System lines believe that they are entitled as a matter of statutory and constitutional right to avoid any step which might be taken as a waiver of their right of judicial review. They must therefore respectfully object to the Commission's jurisdiction to require Chessie System lines to appear at, or consent to, the August 27 argument, at which we must decline to appear.

Respectfully submitted,

/s/ Charles C. Rettberg, Jr.
DOYLE S. MORRIS
CHARLES C. RETTBERG, JR.
Attorneys for the Chessie System Lines

Dated: August 26, 1974

Form 305-A-1

Railroad The Chesapeake and Ohio Railway Company

INCREASE OR DECREASE IN COST OF MATERIALS AND SUPPLIES
OTHER THAN FUEL, DUE TO PRICE CHANGES

Month	Amount (thousands)
	Increase
1973:	
October	$ 47
November	153
December	288
1974:	
January	372
February	520
March	795
April	1,048
May	1,108
June	1,376

If estimated, explain procedure:

Price changes calculated on the basis of increases in AAR indices for materials other than fuel. Total operating expenses less payroll and other nonpurchased type expenses was used as the base "materials" cost. This figure is regarded as compatible with materials, supplies, and other purchases used by AAR in developing price indices.

Note: Calculation of increased material cost should be consistent with carrier evidence in Ex Parte 305 which was based on price increases subsequent to October 1, 1973.

Certified:

Sig. B. Lawler

Title Asst. Vice President & Comptroller

Due date: August 19, 1974

Form 305-A-2

MAINTENANCE OF WAY EXPENSES, BY QUARTERS, 1971-1974
(Dollars in thousands)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Line No.	Account	1971				1972				1973				1974	
		3rd Q (c)	4th Q (d)	1st Q (e)	2nd Q (f)	3rd Q (g)	4th Q (h)	1st Q (i)	2nd Q (j)	3rd Q (k)	4th Q (l)	1st Q (m)	2nd Q (n)
1	(2001) Superintendence	1,555	1,648	1,325	1,398	1,363	969	1,160	1,268	1,389	1,353	1,392	1,350
2	(2002) Roadway maintenance--Yard switching tracks	33	23	34	19	40	19	21	17	24	35	14	26
3	--Way switching tracks	47	5	32	48	32	26	31	50	44	27	22	55
4	--Running tracks	883	98	614	931	634	521	591	977	865	529	661	1,061
5	(2121) Ties--Yard switching tracks	132	160	22	99	88	31	7	55	37	83	11	53
6	--Way switching tracks	52	43	4	60	28	1	130	1,076	446	14	8	37
7	--Running tracks	1,000	822	84	1,388	340	22	9	8	284	384	162	321
8	(2122) Rails--Yard switching tracks	4	6	4	2	2	27	3	40	22	7	(24)	37
9	--Way switching tracks	27	5	3	3	13	(30)	61	282	428	(1)	14	16
10	--Running tracks	519	92	60	980	246	(589)	50	42	45	(232)	262	224
11	(2123) Other track material--Yard switching tracks	109	65	60	51	36	46	18	19	32	76	56	20
12	--Way switching tracks	53	49	17	317	17	36	338	370	590	103	9	23
13	--Running tracks	637	926	39	52	326	709	653	23	66	115	170	441
14	(2124) Track laying and surfacing--Yard switching tracks	44	36	80	149	44	34	40	42	161	144	83	116
15	--Way switching tracks	138	87	80	130	130	99	95	142	2,257	2,807	170	144
16	--Running tracks	2,640	1,659	1,560	2,926	2,556	1,937	1,861	2,774			2,225	3,226
17	(2125-226-210-2211) Other track maintenance												
18	--Yard switching tracks	5	5	(2)	11	12	14	17	19	16	26	39	48
19	--Way switching tracks	48	(25)	(11)	246	42	27	22	31	38	22	23	35
20	--Running tracks	932	504	244	726	834	526	426	621	756	648	438	270
21	Sub-totals (Lines 2 to 20)--Yard switching tracks	327	270	117	253	226	171	150	165	238	322	181	329
22	-- Way switching tracks	345	214	147	379	262	159	176	337	298	216	196	326
23	-- Running tracks	6,611	4,101	2,903	7,644	5,136	3,126	3,627	6,490	5,852	4,226	2,897	6,262
24	(2221) Stations and office buildings	474	373	327	275	236	216	251	252	255	274	282	289
25	(2222) Shops and enginehouses	316	275	203	222	233	206	262	230	278	282	239	320
26	(2223) Communication systems	443	300	352	352	372	376	605	416	361	336	443	418
27	(2224) Signals and interlockers	980	821	770	1,006	914	775	855	949	971	1,116	1,125	1,116
28	(2225) Power plants	449	377	422	381	420	449	382	328	605	391	315	440
29	(2226) Power-driven machinery	440	450	321	395	437	469	401	368	650	695	455	710
30	(2227) Roadway buildings	395	325	325	440	468	398	393	397	414	419	401	380
31	(2228-229-230-231-232) Water stations, fuel stations, shops, grain elevators and other miscellaneous structures												
32	and 2291 other maintenance accounts	170	1,681	4,073	1,070	(69)	86	2,302	609	1,336	1,635	2,057	1,821
33	Subtotal (Lines 24 to 32)	3,627	3,863	6,703	4,150	3,012	2,973	5,231	3,667	4,870	4,868	5,588	5,661
34	(2241) Maintaining joint tracks, yards and other facilities--Dr.	1,321	1,067	1,271	1,292	1,295	1,160	1,143	1,227	1,269	1,387	1,220	1,231
35	(2242) Maintaining joint tracks, yards and other facilities--Cr.												
36	Subtotal (Lines 34 to 35)	1,321	1,067	1,271	1,292	1,295	1,160	1,143	1,227	1,269	1,387	1,220	1,231
37	(2243) Maintaining joint tracks, yards and other facilities--Dr.	259	206	263	238	226	355	257	379	311	280	241	214
38	(2244) Maintaining joint tracks, yards and other facilities--Cr.	1,062	861	1,078	1,054	1,069	877	856	868	938	1,127	979	1,017
39	Subtotal (Lines 37 + 38)	13,507	11,737	12,263	14,660	11,040	8,241	11,050	12,865	13,185	12,190	12,543	13,529
40	Total of above (Lines 1 + 21 + 22 + 23 + 33 + 35)	1,693	2,081	1,537	1,540	1,552	1,605	1,526	1,677	1,516	3,079	1,568	1,717
41	(2245-2251) Depreciation and retirements												
42	Grand total - Maintenance of way and structures (Lines 38 + 39)	15,200	13,778	13,800	16,200	12,600	9,814	12,576	14,342	14,701	15,269	13,691	14,746
43	Freight expense 2/	13,130	11,715	12,798	14,198	12,399	9,813	12,371	14,338	14,497	15,265	12,487	14,742
44	Passenger expense 2/	70	63	2	2	1	1	3	4	4	4	4	4
45	Payroll taxes apportioned to above	837	827	829	765	806	705	729	806	856	1,174	1,722	1,455

Certified: Sig. C. S. Lawler

Title Asst. Vice President & Comptroller

1/ - Separation between freight and passenger service may be estimated. (Explain procedure).
The separation of expenses between freight and passenger service was made in the same ratio as the separation of expenses is reported to the Annual Report R-1.
Due date August 19, 1974

BEST COPY AVAILABLE

Form 305-A-3

Railroad THE CHESAPEAKE AND OHIO RAILWAY COMPANY

MAINTENANCE OF EQUIPMENT EXPENSES, BY QUARTERS, 1971-1974

(Dollars in thousands)

Line No.	Account	1971				1972				1973				1974	
		1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	(2213) Superintendence	1,028	1,077	1,161	1,013	930	926	1,040	1,120	1,002	970	952	892	870	867
2	(2223) Shop machinery	655	674	591	351	284	336	275	208	263	279	229	280	356	403
3	(2233) Locomotives - Repairs--Yard	1,262	1,303	1,486	762	1,040	1,240	988	1,097	1,102	1,192	975	1,087	863	826
4	--Other	4,554	5,014	4,763	2,302	3,449	3,726	2,988	3,579	3,643	3,949	3,650	4,323	5,020	5,251
5	(2243) Freight train cars - Repairs	7,818	7,137	10,309	5,969	5,295	6,156	6,158	6,155	7,230	7,944	6,596	8,143	7,835	8,065
6	(2253) Passenger train cars - Repairs	272	216	87	(256)	88	1	(11)	43	1	(156)	161	4	3	-
7	(2263) Employees' health and welfare benefits	684	693	675	547	542	675	709	619	581	600	590	571	572	592
8	Sub-total (Lines 1 to 7)	16,275	16,314	19,072	10,488	11,628	13,056	12,157	12,821	13,822	14,778	13,153	15,300	15,319	15,984
9	(2204-208-218-223-226-228-229-232-233-234-239) Other maintenance accounts	1,499	1,869	1,736	1,708	1,809	1,029	1,388	1,504	1,308	1,403	1,235	1,636	1,492	1,556
10	Total (Lines 8 + 9)	17,774	18,183	20,808	12,196	13,437	14,085	13,545	14,325	15,130	16,181	14,388	16,936	16,811	17,540
11	(2248) Joint maintenance of equipment expenses - Dr.	97	70	127	62	107	80	73	60	84	78	81	106	105	114
12	(2257) Joint maintenance of equipment expenses - Cr.	26	22	18	15	16	14	4	14	11	13	10	11	26	18
13	Sub-total (Lines 11 - 12)	71	48	109	47	91	66	69	46	73	65	71	95	79	96
14	(2201-230-231) Depreciation and retirement	6,142	6,111	6,263	6,208	6,212	6,269	6,263	6,271	6,196	6,227	6,234	6,045	6,088	6,075
15	Grand total (Lines 10 + 13 + 14)	23,987	24,342	27,180	18,451	19,740	20,420	19,877	20,642	21,399	22,473	20,693	23,076	22,978	23,711
16	Freight expense a	23,723	24,074	26,881	18,248	19,663	20,340	19,799	20,561	21,363	22,435	20,658	23,037	22,939	23,671
17	Passenger expense a	264	268	299	203	77	80	78	81	36	38	35	39	39	40
18	Payroll taxes apportioned to above	1,474	1,471	1,619	888	1,046	1,139	1,522	789	1,072	1,222	1,217	1,605	1,743	2,264

a - Separation between freight and passenger service may be estimated. (Explain procedure).
The separation of expenses between freight and passenger service was made in the same ratio as the separation of expenses is reported in the Annual Report R-1.

Certified: Sig. B F Lamb

Title Asst. Vice President & Comptroller

Due date: August 19, 1974

Form 305-A-4

Railroad THE CHESAPEAKE AND OHIO RAILWAY COMPANY

CAPITAL EXPENDITURES, BY QUARTERS, 1971-1974

(Dollars in thousands)

Line No.	Account	1971				1972				1973				1974	
		1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	(1) Grading	9	59	435	194	21	48	521	121	204	37	518	133	28	417
2	(6) Bridges, trestles and culverts	70	353	349	34	18	(61)	253	153	91	9	975	137	16	195
3	(7) Ties	71	110	28	9	41	65	73	54	(23)	119	64	39	19	20
4	(8) Rails	127	(34)	764	(338)	175	95	90	204	29	236	50	362	112	146
5	(10) Other track material	129	368	240	281	223	316	262	43	(21)	120	215	158	19	121
6	(11) Ballast	36	70	99	34	16	35	66	59	2	80	60	29	8	35
7	(12) Track laying and surfacing	42	199	354	58	113	8	342	130	(29)	197	409	108	71	156
8	(20) Shops and enginehouses	17	110	38	(59)	6	16	130	25	186	59	1	24	25	37
9	(23) IOFC/COFC terminals	-	409	28	-	-	-	-	-	-	-	-	-	-	-
10	(26) Communication systems	93	159	42	(2)	10	5	17	(7)	18	72	2	117	86	6
11	(27) Signals and interlockers	11	226	160	246	201	156	39	57	86	104	455	114	105	44
12	(29) Power plants	-	3	-	-	-	-	(2)	1	-	(1)	-	-	1	-
13	(37) Roadway machines	226	209	410	139	160	231	21	-	5	4	1	53	69	183
14	(39) Shop machinery	80	61	65	25	33	101	2	(13)	73	156	15	84	(2)	66
15	(45) Power-plant machinery	(46)	2	3	67	(17)	-	(1)	38	-	-	-	(41)	-	(1)
16	All other road	202	232	963	447	(107)	24	616	165	28	149	344	226	139	183
17	Total - road expenditures	1,067	2,536	3,978	1,135	893	1,039	2,429	1,030	649	1,281	3,109	1,544	696	1,818
	Equipment														
18	(52) Locomotives	123	(33)	6,288	64	17	7	113	(6)	(19)	8	11	3	4	-
19	(53) Freight train cars	8,414	1,412	1,351	1,422	3,016	1,030	304	(10)	64	5,959	557	408	509	11,146
20	(55) Highway revenue equipment	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21	(57) Work equipment	23	427	86	48	18	5	6	12	-	-	-	20	(1)	2
22	All other equipment	-	182	2	194	-	4	90	48	8	16	76	234	-	186
23	Total - equipment expenditures	8,560	1,988	7,727	1,728	3,051	1,046	513	44	53	5,983	644	665	512	11,341
24	Total - general expenditures	-	-	-	-	-	-	-	-	-	-	-	-	-	-
25	(80) Other elements of investment	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26	(90) Construction work in progress	1,255	(872)	(1,758)	289	(868)	40	(1,102)	485	912	587	(2,285)	425	792	(23)
27	Grand total - All investment accounts	10,882	3,652	9,947	3,152	3,096	2,125	1,840	1,559	1,614	7,851	1,468	2,634	2,000	13,136

Note: Amount reported should conform to content of expenditures for additions and betterments as reported in quarterly CBS reports, including expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.

Certified: Sig. B F Lamb

Title Asst. Vice President & Comptroller

Due date: August 19, 1974

Form 305-A-5

CRETS AND UNITS OF TIES AND R/ILS LAID, BY QUARTERS, 1971-1974

(Dollars in thousands)

Line No.	Item	Source of annual data	1971				1972				1973				1974	
			1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q
			(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	NEW CROSS TIES LAID															
2	In replacement															
3	Cross ties	Sch. 313, col. (d)	89	1,318	998	600	53	777	582	353	52	760	570	345	32	484
4	Switch and bridge ties	Sch. 313, col. (e)	7	104	79	48	7	103	77	47	11	156	117	71	51	347
5	In additional tracks															
6	Cross ties	Sch. 314, col. (d)	12	172	129	78	6	102	77	47	6	80	60	36	43	39
7	Switch and bridge ties	Sch. 314, col. (e)	2	35	26	16	1	18	14	9	2	25	22	13	11	38
8	NEW MILES OF RAILS LAID															
9	In replacement															
10	Running tracks, etc.	Sch. 315, col. (d)	147	2,161	1,622	982	93	1,363	1,020	618	96	1,401	1,051	637	727	1,389
11	Yard tracks, etc.	Sch. 315, col. (c)	3	37	27	17	4	57	43	25	5	70	52	31	-	-
12	In additional tracks															
13	Running tracks, etc.	Sch. 316, col. (d)	4	57	43	26	2	32	24	16	1	18	14	8	-	-
14	Yard tracks, etc.	Sch. 316, col. (b)	4	71	53	32	3	39	29	18	4	54	41	25	91	11
15	NEW CROSS TIES LAID															
16	In replacement															
17	Cross ties (number)	Sch. 311, col. (b)	15,559	225,803	168,903	102,365	9,122	133,791	100,343	60,814	8,791	128,931	96,698	58,603	4,190	62,487
18	In, and for use (Bd. Ft.)	Sch. 311, col. (e)	43,030	611,105	473,329	288,866	30,780	437,180	265,206	58,260	854,484	640,863	388,607	278,970	1,898,696
19	In additional tracks															
20	Cross ties (number)	Sch. 316, col. (b)	2,186	32,082	24,047	14,574	1,383	19,995	14,996	9,089	1,104	16,198	13,149	7,303	7,937	5,107
21	In, and for use (Bd. Ft.)	Sch. 316, col. (c)	14,629	211,638	158,721	96,195	2,719	113,211	84,908	32,459	11,095	162,729	122,047	73,968	61,666	130,925
22	NEW RAILS LAID															
23	In replacement															
24	Rails, etc. (tons)	Sch. 315, col. (f)	1,344	19,345	14,508	8,975	853	12,504	9,378	5,684	815	11,937	8,953	5,426	5,096	10,854
25	Yard tracks, etc. (tons)	Sch. 315, col. (g)	45	661	496	301	75	1,108	830	503	98	1,432	1,073	650	-	-
26	In additional tracks															
27	Running tracks, etc. (tons)	Sch. 316, col. (f)	70	1,016	762	462	29	420	315	191	28	407	305	185	-	-
28	Yard tracks, etc. (tons)	Sch. 316, col. (g)	95	1,400	1,050	637	53	776	582	352	73	1,112	834	505	912	103

Certified: Sig. F G Lavelle

Title Asst. Vice President & Controller

Due date: August 19, 1974

Railroad The Chesapeake and Ohio Railway Company

Form 305-A-6

DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

As of June 30, 1974

Line No.	Item	Amount (thousands)	Amount in col. (a) represented by facilities covered by pending petitions for abandonment
		(a)	(b)
1	Yard switching tracks	Respondent has nothing to report on this schedule.	
2	Way switching tracks		
3	Running tracks		
4	Sub-total (Lines 1 to 3) a		
5	Bridges and tunnels		
6	Buildings		
7	Shops and enginehouses		
8	Wharves and docks		
9	Communications and signalling		
10	All other roadway accounts		
11	Total - road (Lines 1 to 10)		
12	Freight train cars:		
13	Box cars		xxx
14	Refrigerator cars		xxx
15	Gondolas		xxx
16	Hoppers		xxx
17	Covered hoppers		xxx
18	Flat cars		xxx
19	All other		xxx
20	Sub-total (Lines 13 to 19)		xxx
21	Locomotives		xxx
22	Work equipment		xxx
23	All other equipment		xxx
24	Total - equipment (Lines 20 to 23)		xxx
25	Grand total (Lines 11 + 24)		

Note: Costs expressed in terms of wage rates and prices as of 6/30/74.

a - Number of cross ties		
Switch and bridge ties (Ft.B.M.)		
Tons of rail		

Certified: Sig. A G Greenlee

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-7

Railroad The Chesapeake and Ohio Railway Company

DELAYED CAPITAL IMPROVEMENTS

As of June 30, 1974

Line No.	Account	Amount (thousands)
1	(3) Grading	
2	(6) Bridges, trestles and culverts	
3	(8) Ties	
4	(9) Rails	Respondent
5	(10) Other track material	
6	(11) Ballast	
7	(12) Track laying and surfacing	
8	(20) Shops and enginehouses	has
9	(25) TOFC/COFC terminals	
10	(26) Communication systems	
11	(27) Signals and interlockers	
12	(29) Power plants	nothing to
13	(37) Roadway machines	
14	(44) Shop machinery	
15	(45) Power-plant machinery	report
16	All other road	
17	Total-road expenditures	
	Equipment	on this
18	(52) Locomotives	
19	(53) Freight train cars	
20	(55) Highway revenue equipment	schedule
21	(57) Work equipment	
22	All other equipment	
23	Total-equipment expenditures	
24	Total-general expenditures	
25	(80) Other elements of investment	
26	(90) Construction work in progress	
27	Grand total-all investment accounts	

Certified:

Sig. B G Lawler

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-8

Railroad CHESAPEAKE AND OHIO RAILWAY COMPANY

EQUIPMENT DATA

As of June 30, 1974

Line No.	Type of equipment	Number owned or leased	Home cars undergoing or awaiting repairs	
			Number	Percent
		(a)	(b)	(c)
1	Box cars	13,322	1,111	8.3
2	Refrigerator cars	1,282	72	5.6
3	Gondolas	6,696	521	7.8
4	Hoppers	45,245	1,307	2.9
5	Covered hoppers	2,987	176	5.9
6	Flat cars	838	104	12.4
7	Other revenue cars	620	8	1.3
8	Total-cars	70,990	3,299	4.6
		Number owned or leased	Number serviceable	Number unserviceable
		(a)	(b)	(c)
9	Locomotive units	974	944	30

Note: Freight car data should agree with comparable data in report CS-60 for July 1, 1974. Locomotive data should conform to report OS-C for the second quarter of 1974.

Certified:

Sig. B G Lawler

Title Asst. V.P. & Comptroller

Due date: August 19, 1974

Form 305-A-9

Railroad CHESAPEAKE & OHIO RAILWAY

TRACK UNDER SLOW ORDERS

As of June 30, 1974

Line No.	Class of track	Number of slow orders	Miles of track covered by slow orders
		(a)	(b)
1	Yard switching tracks ...	None	None
2	Way switching tracks	None	None
3	Running tracks	23	53.4

Notes: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

Certified:

Sig. B Y Crawley

Title Asst. V.P. & Comptroller

Due date: August 19, 1974

Form 305-A-10

Railroad The Chesapeake and Ohio Railway Company

ESTIMATED REVENUES TO BE OBTAINED

July 1, 1974 to June 30, 1975

By Quarter

(Dollars and ton-miles in thousands)

Line No.	Item	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)
1	Estimated freight revenues including Ex Parte 305	$ 122,045	$ 134,799	$ 125,306	$ 153,491
2	Estimated ton-miles	7,201,905	7,678,657	6,875,404	7,757,884
3	Estimated revenue per ton-mile (1÷2)	.0169	.0176	.0182	.0198
4	All other revenues -- estimated including Ex Parte 305	7,168	6,617	5,272	7,473
5	Total estimated revenues including Ex Parte 305 (1+4)	129,213	141,416	130,578	160,964
6	Total estimated additional revenues from Ex Parte 305	10,717	11,865	10,979	13,531
7	Total estimated revenues excluding Ex Parte 305 (5-6)	118,496	129,551	119,599	147,433
8	Estimated increase in costs of material and supplies, other than fuel (not to exceed 3 percentage points of the 10-percent authorization)	3,215	3,560	3,294	4,059
9	Allowance for increased income taxes a	3,872	4,204	4,063	4,825
10	Estimated yield [6-(8+9)]...	3,630	4,101	3,622	4,647
	a Estimated income taxes should include the effect of applicable tax benefits. Tax allowance shown on line 9 is to be on an incremental basis and determined as follows:				
	a. Income taxes based on estimated revenues on line 5	6,472	7,204	3,068	12,686
	b. Income taxes based on estimated revenues on line 7	2,600	3,000	(995)	7,861
	c. Allowance for increased income taxes a - b	3,872	4,204	4,063	4,825

Note: Attach hereto full explanation of the methodology employed in arriving at the revenue data shown on lines 1, 4 and 6.

Certified: Sig. B Y Crawley

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-10

The Chesapeake and Ohio Railway Company

Procedure to arrive at revenue data shown on lines 1, 4 and 6, form 305-A-10:

Estimated revenue for each quarter projected by using revenues same quarter year ago, plus 9.1% added to Merchandise for X-305 effect, 9.7% to Coal, Coke & Iron Ore, and 5% added to Miscellaneous freight revenue. Passenger revenues were not increased.

Form 305-A-11
Sheet 1 (7/74)

Railroad THE CHESAPEAKE AND OHIO RAILWAY COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES
July 1, 1974 to June 30, 1975, by Quarters
(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated EP-305 revenues applied			
		4th Q 1974	1st Q 1975	2nd Q 1975		3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(201) Superintendence	1,389	1,353	1,392	1,350				
2	(202) Roadway maintenance--Yard switching tracks	26	35	36	26				
3	--Way switching tracks	44	37	22	55				
4	--Running tracks	865	529	641	1,065				
5	(212) Fixe--Yard switching tracks	83	63	11	53				
6	--Way switching tracks	23	16	8	27				
7	--Running tracks	646	284	162	551				
8	(214) Rails--Yard switching tracks	4	(7)	(3)	37				
9	--Way switching tracks	22	(11)	14	16				
10	--Running tracks	438	(29)	262	324				
11	(215) Other track material--Yard switching tracks	45	26	58	28				
12	--Way switching tracks	30	10	9	23				
13	--Running tracks	590	185	170	441				
14	(220) Track laying and surfacing--Yard switching tracks	46	115	83	116				
15	--Way switching tracks	141	144	120	166				
16	--Running tracks	2,757	2,807	2,334	3,236				
17	(226-229)- Other track accounts	16	26	19	48				
18	--Yard switching tracks	38	22	23	39				
19	--Way switching tracks	756	448	438	770				
20	--Running tracks	238	322	181	308				
21	Sub-totals (Lines 2 to 20) - add switching tracks	248	216	196	326				
22	-- Way switching tracks	5,852	4,226	3,807	6,367				
23	-- Running tracks	255	274	282	289				
24	(227) Stations and office buildings	278	282	279	320				
25	(235) Wharves and docks	361	336	463	419				
26	(241) Signals and interlockers	971	1,116	1,125	1,176				
27	(243) Communication systems	605	391	515	460				
28	(247) Roadway machines	450	695	666	716				
29	(249) Small tools and supplies	414	419	401	380				
30	(277) Employees' health and welfare benefits								
31	(227-282, excluding above and 266, 267, 278 and 279) Other maintenance accounts	1,336	1,635	2,057	1,921				
32	Sub-total (Lines 24 to 31)	5,670	4,868	5,508	5,661				
33	(266-267) Maintaining joint tracks, yards and other facilities - Dr.	1,269	1,387	1,220	1,231				
34	(278) Maintaining joint tracks, yards and other facilities - Cr.	311	280	241	214				
35	Sub-total (Lines 33 + 34)	938	1,127	979	1,017				
36	Total of above (Lines 1 + 21 + 22 + 23 + 32 + 35)	15,185	-2,190	12,143	15,029				
37	(266-267) Depreciation and retirements	1,516	3,079	1,548	1,717				
38	Grand total - Maintenance of way and structures (Lines 36 + 37)	16,701	5,269	13,691	16,746				
39	Payroll taxes apportioned to above	856	1,174	1,222	1,453				

Note: Estimated expenditures expressed in terms of July 1974 dollars.

Certified: Sig. _____ Title Asst. Vice President & Comptroller

Due date

Form 305-A-11
Sheet 2 (M/E)

Railroad THE CHESAPEAKE AND OHIO RAILWAY COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

July 1, 1974 to June 30, 1975, by Quarters

(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated EP-305 revenues applied			
		3d Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(301) Superintendence	952	892	870	867				
2	(302) Shop machinery	229	280	356	403				
3	(311) Locomotives - Repairs--Yard	975	1,087	863	826				
4	--Other	3,650	4,323	5,020	5,251				
5	(314) Freight train cars - Repairs	6,596	8,143	7,615	8,045				
6	(317) Passenger train cars - Repairs	161	4	3	-				
7	(315) Employees' health and welfare benefits	590	571	572	592				
8	Sub-total (Lines 1 to 7)	13,153	15,300	15,319	15,986				
9	(304-306-316-323-326-328-329-332-333-336-339) Other maintenance accounts	1,235	1,636	1,492	1,556				
10	Total (Lines 8 + 9)	14,388	16,936	16,811	17,540				
11	(336) Joint maintenance of equipment expenses - Dr.	81	106	105	114				
12	(337) Joint maintenance of equipment expenses - Cr.	10	11	26	18				
13	Sub-total (Lines 11 - 12)	71	95	79	96				
14	(305-330-331) Depreciation and retirements	6,234	6,045	6,088	6,075				
15	Grand total (Lines 10 + 13 + 14)	20,693	23,076	22,978	23,711				
16	Payroll taxes apportioned to above	1,217	1,605	1,743	2,264				

Note: Estimated expenditures expressed in terms of July 1974 dollars.

Certified: Sig. B. F. Lacouture

Title Asst. Vice President & Comptroller

Due date:

Form 305-A-11
Sheet 3 (Exp.)

Railroad CHESAPEAKE AND OHIO RAILWAY COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

July 1, 1974 to June 30, 1975, by Quarters

(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated EP-305 revenues applied			
		3d Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(3) Grading	$ 220	$ 125	$ 220	$ 300				
2	(6) Bridges, trestles and culverts	50	50	50	100				
3	(8) Ties	100	50	100	150				
4	(9) Rails	250	150	150	250				
5	(10) Other track material	200	100	100	100				
6	(11) Ballast	50	25	50	50				
7	(12) Track laying and surfacing	150	150	150	150				
8	(20) Shops and enginehouses	100	-	100	-				
9	(21) TOFC/COFC terminals	-	-	-	-				
10	(26) Communication systems	50	50	50	50				
11	(27) Signals and interlockers	200	-	200	200				
12	(29) Power plants	-	-	-	-				
13	(37) Roadway machines	-	-	130	-				
14	(44) Shop machinery	-	-	-	-				
15	(45) Power-plant machinery	-	-	-	-				
16	All other road	130	-	200	150				
17	Total - road expenditures	1,500	700	1,500	1,500				
	Equipment								
18	(52) Locomotives	-	-	3,400	-				
19	(53) Freight train cars	2,400	300	19,848	19,848				
20	(55) Highway revenue equipment	-	-	-	-				
21	(57) Work equipment	-	-	-	-				
22	All other equipment	-	-	-	-				
23	Total - equipment expenditures	2,400	300	23,248	19,848				
24	Total - general expenditures	3,900	1,000	24,748	21,348				
25	(80) Other elements of investment								
26	(90) Construction work in progress								
27	Grand total - All investment accounts	$ 3,900	$ 1,000	$ 24,748	$ 21,348				

Note: Amount reported should conform to content of expenditures for additions and betterments as reported in quarterly CBS reports, including expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property but not including expenditures for purchase of existing lines. Estimated expenditures expressed in terms of July 1974 dollars.

Certified: Sig. B. F. Lacouture

Title Asst. Vice President & Comptroller

Due date:

Form 305-A-1

Railroad The Baltimore and Ohio Railroad Company

INCREASE OR DECREASE IN COST OF MATERIALS AND SUPPLIES
OTHER THAN FUEL, DUE TO PRICE CHANGES

Month	Amount (thousands)
1973:	Increase
October	$ 92
November	248
December	411
1974:	
January	577
February	981
March	1,205
April	1,660
May	2,152
June	2,304

If estimated, explain procedure:

Price changes calculated on the basis of increases in AAR indices for materials other than fuel. Total operating expenses less payroll and other nonpurchased type expenses was used as the base "materials" cost. This figure is regarded as compatible with materials, supplies, and other purchases used by AAR in developing price indices.

Note: Calculation of increased material cost should be consistent with carrier evidence in Ex Parte 305 which was based on price increases subsequent to October 1, 1973.

Certified:

Sig. B Glaeske

Title Asst. Vice President & Comptroller

Due date: August 19, 1974

Form 305-A-2

Railroad THE BALTIMORE AND OHIO RAILROAD COMPANY

MAINTENANCE OF WAY EXPENSES, BY QUARTERS, 1971-1974
(Dollars in thousands)

Line No.	Account	1971 1st Q	1971 2nd Q	1971 3rd Q	1971 4th Q	1972 1st Q	1972 2nd Q	1972 3rd Q	1972 4th Q	1973 1st Q	1973 2nd Q	1973 3rd Q	1973 4th Q	1974 1st Q	1974 2nd Q
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	(2101) Superintendence	1,204	1,204	1,395	1,282	1,369	1,331	1,445	1,372	1,426	1,303	1,380	1,681	1,658	1,588
2	(2102) Roadway maintenance--Yard switching tracks	73	89	78	44	45	50	56	57	58	48	81	77	49	27
3	--Main switching tracks	23	36	39	17	27	41	31	22	27	39	36	30	30	49
4	--Running tracks	726	1,094	1,392	506	865	1,233	970	676	902	1,277	1,304	943	1,092	1,852
5	(2102) Ties--Yard switching tracks	9	52	61	31	10	127	89	37	9	96	65	58	30	75
6	--Main switching tracks	11	43	58	11	6	62	27	17	3	32	24	18	8	43
7	--Running tracks	336	1,041	1,155	383	171	1,915	867	537	103	1,064	813	605	277	1,431
8	(2104) Rails--Yard switching tracks	37	37	37	11	18	199	146	27	22	178	60	100	92	79
9	--Main switching tracks	37	37	38	106	(316)	38	19	15	5	24	44	(35)	3	24
10	--Running tracks	932	1,116	1,172	316	570	1,803	571	655	112	801	1,565	127	120	803
11	(2106) Other track material--Yard switching tracks	53	84	42	69	65	179	232	129	32	109	127	(1,175)	99	61
12	--Main switching tracks	14	29	36	40	13	39	38	44	14	26	32	55	21	25
13	--Running tracks	410	896	1,093	1,219	407	1,600	1,180	1,363	670	852	360	1,081	699	829
14	(2200) Track laying and surfacing--Yard switching tracks	251	612	260	185	136	415	259	304	337	331	319	442	372	532
15	--Main switching tracks	67	128	128	82	74	144	122	103	67	124	114	119	100	137
16	--Running tracks	2,079	3,997	3,917	2,499	2,273	4,470	3,780	3,180	2,890	4,135	3,795	3,978	3,364	4,537
17	(220-208-210-218-221) Other track accounts	27	37	20	12	7	24	29	32	27	35	30	30	33	40
18	--Yard switching tracks	26	36	28	30	19	40	47	33	26	31	30	31	26	35
19	--Main switching tracks	870	1,113	1,113	928	742	1,186	1,354	1,137	870	1,149	1,248	1,204	932	1,625
20	--Running tracks	645	907	1,552	382	267	994	821	591	645	797	648	782	696	858
21	Sub-totals (Lines 2 to 20)--Yard switching tracks	158	316	531	172	157	384	286	236	158	236	281	193	188	318
22	-- Main switching tracks	5,367	9,575	9,981	3,219	3,068	12,075	8,928	7,328	5,367	9,278	9,493	6,636	6,352	10,734
23	-- Running tracks	255	559	588	205	206	777	742	241	255	232	221	233	235	248
24	(227) Stations and office buildings	232	559	588	205	206	778	742	241	255	232	221	233	235	248
25	(230) Shops and enginehouses	233	611	611	202	228	202	267	348	191	231	246	273	220	252
26	(243) Communication system	591	649	642	202	227	492	336	348	191	231	246	273	220	252
27	(249) Signals and interlockers	1,107	1,099	1,326	1,279	982	1,321	1,073	1,300	1,127	1,244	1,190	1,331	1,321	1,321
28	(253) Roadway machines	518	341	533	612	533	615	521	561	555	547	565	553	572	651
29	(271) Small tools and supplies	630	317	643	320	330	675	481	561	559	592	622	660	687	861
30	(272) Employees' health and welfare benefits	390	420	441	411	334	509	568	493	451	489	505	481	469	646
31	(221-282, excluding above and 266, 267, 276 and 279) Other maintenance accounts	2,736	1,399	(2,264)	2,868	3,113	(2,793)	6123	4,487	2,102	303	1,029	597	1,356	1,079
32	Sub-total (Lines 25 to 31)	6,315	5,935	1,322	5,640	6,990	958	2,886	8,175	5,381	3,825	4,680	4,822	5,271	5,643
33	(2(8) Maintaining joint tracks, yards and other facilities--Dr.	748	602	758	594	739	626	565	762	776	809	879	777	818	653
34	(279) Maintaining joint tracks, yards and other facilities--Cr.	316	292	388	368	331	318	295	321	296	380	318	292	340	317
35	Sub-total (Lines 33 + 34)	432	310	370	226	408	308	270	441	480	509	561	485	478	340
36	Total of above (Lines 1 + 21 + 22 + 23 + 32 + 35)	17,096	15,526	14,027	11,921	13,239	16,000	14,614	18,092	13,235	15,387	16,851	14,339	15,441	19,222
37	(265-267) Depreciation and retirement	1,006	1,574	1,873	1,865	1,761	1,900	2,086	1,953	1,810	1,911	1,863	3,096	1,699	1,659
38	Grand total - Maintenance of way and structures (Lines 36 & 37)	18,100	15,100	15,900	13,786	15,000	17,900	16,700	20,045	15,045	17,298	18,714	17,473	18,140	21,005
39	Total expense %	18,048	15,031	15,927	13,696	14,986	17,884	16,695	20,027	15,039	17,291	18,696	17,465	18,133	21,022
40	Passenger expense %	42	69	73	72	14	16	19	18	6	7	8	8	7	9
41	Portion taxes apportioned to above	855	855	904	702	655	897	1,019	883	1,121	1,212	1,210	1,546	1,469	1,559

Certified Sig. B Glaeske

Title Asst. Vice President & Comptroller

a - Separation between freight and passenger service may be estimated. (Explain procedure).
The separation of expenses between freight and passenger service was made in the same ratio as the separation of expenses is reported to the Annual Report R-1.

Due date: August 19, 1974

Form 305-A-3

Railroad THE BALTIMORE AND OHIO RAILROAD COMPANY

MAINTENANCE OF EQUIPMENT EXPENSES, BY QUARTERS, 1971-1974

(Dollars in thousands)

Line No.	Account	1971				1972				1973				1974	
		1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	(301) Superintendence	1,041	1,080	1,103	1,063	1,086	1,011	861	836	868	870	896	1,024	958	1,019
2	(302) Shop machinery	297	277	316	213	219	226	213	222	268	252	213	242	287	299
3	(311) Locomotives - Repairs--Yard	1,807	1,794	1,463	1,269	1,303	1,277	1,250	1,340	1,183	1,448	1,284	1,405	1,265	1,496
4	--Other	4,877	4,650	4,573	3,221	3,293	3,348	3,513	3,560	3,522	3,825	3,801	4,264	4,498	4,747
5	(314) Freight train cars - Repairs	7,922	9,230	8,210	5,655	5,230	6,762	6,421	6,540	7,071	8,309	7,173	8,728	8,455	8,543
6	(317) Passenger train cars - Repairs	423	264	190	115	84	125	113	182	139	153	133	158	142	124
7	(335) Employees' health and welfare benefits	589	594	587	545	461	579	598	576	554	569	584	550	549	543
8	Sub-total (Lines 1 to 7)	16,956	17,889	16,382	12,081	11,736	13,368	12,989	13,296	13,595	15,445	14,064	16,371	16,392	16,811
9	(304-306-316-323-326-328-329-332-333-334-339) Other maintenance accounts	1,143	1,260	1,127	1,354	1,158	969	886	1,080	1,232	1,134	1,476	1,241	1,519	1,246
10	Total (Lines 8 + 9)	18,099	19,149	17,509	13,435	12,894	14,337	13,875	14,376	14,827	16,579	15,540	17,612	17,911	18,057
11	(336) Joint maintenance of equipment expenses - Dr.	180	146	147	163	150	165	138	157	330	257	240	283	161	172
12	(337) Joint maintenance of equipment expenses - Cr.	86	79	87	68	56	72	51	74	72	67	71	59	72	71
13	Sub-total (Lines 11 - 12)	94	67	60	95	74	93	87	83	258	190	169	144	89	101
14	(305-330-331) Depreciation and retirements	2,865	2,845	2,813	2,812	2,979	2,968	2,918	2,902	2,859	2,845	2,855	2,896	2,874	2,778
15	Grand total (Lines 10 + 13 + 14)	21,058	22,061	20,382	16,342	15,947	17,378	16,880	17,361	17,944	19,614	18,564	20,652	20,874	20,936
16	Freight expense a	20,554	21,533	19,894	15,950	15,786	17,202	16,709	17,186	17,759	19,422	18,121	20,450	20,673	20,731
17	Passenger expense a	504	528	488	392	161	176	171	195	175	192	179	202	204	205
18	Payroll taxes apportioned to above	1,224	1,221	1,228	927	909	1,020	1,073	1,038	1,121	1,212	1,210	1,564	1,655	1,810

a - Separation between freight and passenger service may be estimated. (Explain procedure).
The separation of expenses between freight and passenger service was made in the same ratio as the separation of expenses is reported in the Annual Report R-1.

Certified: Sig. B F Chandler

Title Asst. Vice-President & Controller

Due date: August 19, 1974

Railroad THE BALTIMORE AND OHIO RAILROAD COMPANY

Form 305-A-4

CAPITAL EXPENDITURES, BY QUARTERS, 1971-1974

(Dollars in thousands)

Line No.	Account	1971				1972				1973				1974	
		1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	(3) Grading	26	(26)	(112)	342	46	29	281	60		133	(12)	92	(34)	(13)
2	(6) Bridges, trestles and culverts	200	79	53	342	213	46	379	69	132	88	24	29	22	(5)
3	(8) Ties	41	43	47	169	40	19	77	58	13	163	4	40	94	165
4	(9) Rails	163	467	587	386	298	307	763	412	158	591	247	355	126	61
5	(10) Other track material	242	430	503	796	117	285	656	48	37	513	258	559	(68)	(92)
6	(11) Ballast	32	53	182	128	20	55	153	39	2	125	53	73	130	(35)
7	(12) Track laying and surfacing	139	200	83	208	51	55	262	161	28	428	33	145	8	(1)
8	(20) Shops and enginehouses	278	26	190	39	295	(3)	(9)	145	49	18	27	98	(1)	27
9	(25) TOFC/COFC terminals	2,055	131	1	10	177	20	2	7	5	4	(3)	4	(1)	1
10	(26) Communication systems	(14)	65	171	44	16	131	134	2	5	39	(4)	98	2	70
11	(27) Signals and interlockers	147	460	191	83	38	(32)	435	295	2	506	22	116	4	13
12	(29) Power plants	(5)	1	1		(14)		6	1	2	(7)	(1)		(3)	3
13	(37) Roadway machines	236	187	587	130	41	305	42	11	7	3	(6)	45	12	84
14	(44) Shop machinery	446	75	34	24	31	11	26	10	6	33	17		59	2
15	(45) Power-plant machinery	(1)	38			14					11	(2)	1	(35)	
16	All other road	(1,622)	479	277	1,345	(52)	171	1,342	675	320	472	135	326	112	419
17	Total - road expenditures	2,363	2,708	2,727	4,051	1,331	1,349	4,549	1,993	766	3,140	792	1,969	423	608
	Equipment														
18	(52) Locomotives	10	20	6,832	9,473	(119)	(47)	2,342	(37)	(3)	(80)	2	676	12	23
19	(53) Freight train cars	425	2,971	2,187	4,590	2,094	1,148	275	21	76	1,548	10,270	4,804	4,989	236
20	(55) Highway revenue equipment			40								294			
21	(57) Work equipment	34	89	200	78	1	12	6	2	22	132	7	25	59	21
22	All other equipment		7						2	9	1				
23	Total - equipment expenditures	469	3,087	9,319	14,141	1,982	1,113	2,623	(12)	104	1,601	10,573	5,505	5,060	282
24	Total - general expenditures														
25	(80) Other elements of investment														
26	(90) Construction work in progress	(278)	(296)	(264)	(1,227)	(625)	186	(2,464)	(764)	177	(1,927)	132	(262)	270	307
27	Grand total - All investment accounts	2,554	5,499	11,782	16,965	2,688	2,648	4,708	1,217	1,047	2,914	11,497	7,212	5,753	1,217

Note: Amount reported should conform to content of expenditures for additions and betterments as reported in quarterly CBS reports, including expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.

Certified: Sig. B F Chandler

Title Asst. Vice President & Comptroller

Due date: August 19, 1974

Form 305-A-5

Railroad The Baltimore and Ohio Railroad Company

COSTS AND UNITS OF TIES AND RAILS LAID, BY QUARTERS, 1971-1974

(Dollars in thousands)

Line No.	Item	Source of annual data	1971 4th Q	1971 3rd Q	1971 2nd Q	1971 1st Q	1972 4th Q	1972 3rd Q	1972 2nd Q	1972 1st Q	1973 4th Q	1973 3rd Q	1973 2nd Q	1973 1st Q	1974 2nd Q	1974 1st Q
			(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	TOTAL COST OF TIES LAID		107	1,370	1,570	5	714	1,178	943	86	480	791	1,056	32	1,106	127
2	In replacement		5	79	79	5	35	59	93	6	85	140	185	13	31	61
3	Cross ties	Sch. 515, col. (d)														
4	Switch and bridge ties	Sch. 515, col. (e)														
5	In additional tracks		1	110	110	1	50	82	20	2	17	29	39	5	8	3
6	Cross ties	Sch. 516, col. (d)	1	41	41	1	19	30	18	2	9	14	16	2	3	2
7	Switch and bridge ties	Sch. 516, col. (e)														
8	TOTAL COST OF RAILS LAID		230	2,552	3,376	5	1,534	2,332	1,724	197	1,317	2,197	2,497	107	824	1,942
9	In replacement		5	58	78	5	36	58	44	5	32	54	63	3	-	27
10	Running tracks, etc.	Sch. 515, col. (d)														
11	Yard tracks, etc.	Sch. 515, col. (e)														
12	In additional tracks		4	58	51	1	23	38	20	1	19	32	39	2	20	1
13	Running tracks, etc.	Sch. 516, col. (d)	4	58	51	1	23	38	20	1	19	32	39	2	20	1
14	Yard tracks, etc.	Sch. 516, col. (e)														
15	TOTAL TIES LAID		17,923	197,161	262,882	1,556	119,487	187,120	143,842	14,441	80,625	132,702	170,936	12,064	17,936	14,[illegible]
16	In replacement		15,838	180,259	240,959	1,556	112,254	170,128	130,568	13,224	73,625	121,447	156,929	11,060	16,931	13,[illegible]
17	Cross ties (number)	Sch. 515, col. (b)														
18	Sw. and br. ties (bd. ft.)	Sch. 515, col. (c)														
19	In additional tracks		2,085	16,902	21,923		7,233	17,000	13,274	1,217	7,000	11,255	13,907	1,004	1,005	1,[illegible]
20	Cross ties (number)	Sch. 516, col. (b)														
21	Sw. and br. ties (bd. ft.)	Sch. 516, col. (c)														
22	TOTAL RAILS LAID		1,972	21,694	28,924	76	13,148	21,120	15,568	1,217	7,000	11,255	13,907	1,004	1,005	1,[illegible]
23	In replacement		76	832	1,110	76	504	832	598	76	432	693	857	62	62	62
24	Running track, etc. (tons)	Sch. 515, col. (f)														
25	Yard tracks, etc. (tons)	Sch. 515, col. (g)														
26	In additional tracks:		34	377	502	0	228	377	270	0	138	238	294	0	0	0
27	Running tracks, etc. (tons)	Sch. 516, col. (f)														
28	Yard tracks, etc. (tons)	Sch. 516, col. (g)														

Certified: Sig. _____

Title _____

Due date: August 30, 1974

Railroad The Baltimore and Ohio Railroad Company Form 305-A-6

DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

As of June 30, 1974

Line No.	Item	Amount (thousands)	Amount in col. (a) represented by facilities covered by pending petitions for abandonment
		(a)	(b)
1	Yard switching tracks	Respondent has nothing to report on this schedule	
2	Way switching tracks		
3	Running tracks		
4	Sub-total (Lines 1 to 3) a		
5	Bridges and tunnels		
6	Buildings		
7	Shops and enginehouses		
8	Wharves and docks		
9	Communications and signalling		
10	All other roadway accounts		
11	Total - road (Lines 1 to 10)		
12	Freight train cars:		
13	Box cars		xxx
14	Refrigerator cars		xxx
15	Gondolas		xxx
16	Hoppers		xxx
17	Covered hoppers		xxx
18	Flat cars		xxx
19	All other		xxx
20	Sub-total (Lines 13 to 19)		xxx
21	Locomotives		xxx
22	Work equipment		xxx
23	All other equipment		xxx
24	Total - equipment (Lines 20 to 23)		xxx
25	Grand total (Lines 11 + 24)		

Note: Costs expressed in terms of wage rates and prices as of 6/30/74.

a - Number of cross ties		
Switch and bridge ties (Ft.B.M.)		
Tons of rail		

Certified: Sig. B. Lacerda

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-7

Railroad The Baltimore and Ohio Railroad Company

DELAYED CAPITAL IMPROVEMENTS

As of June 30, 1974

Line No.	Account	Amount (thousands)
1	(3) Grading	
2	(6) Bridges, trestles and culverts	
3	(8) Ties	
4	(9) Rails	Respondent
5	(10) Other track material	
6	(11) Ballast	
7	(12) Track laying and surfacing	
8	(20) Shops and enginehouses	has
9	(25) TOFC/COFC terminals	
10	(26) Communication systems	
11	(27) Signals and interlockers	nothing to
12	(29) Power plants	
13	(37) Roadway machines	
14	(44) Shop machinery	
15	(45) Power-plant machinery	report
16	All other road	
17	Total-road expenditures	
	Equipment	on this
18	(52) Locomotives	
19	(53) Freight train cars	
20	(55) Highway revenue equipment	
21	(57) Work equipment	schedule
22	All other equipment	
23	Total-equipment expenditures	
24	Total-general expenditures	
25	(80) Other elements of investment	
26	(90) Construction work in progress	
27	Grand total-all investment accounts..	

Certified:

Sig. B J Lawler

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-8

Railroad BALTIMORE AND OHIO RAILROAD COMPANY

EQUIPMENT DATA

As of June 30, 1974

Line No.	Type of equipment	Number owned or leased	Home cars undergoing or awaiting repairs	
			Number	Percent
		(a)	(b)	(c)
1	Box cars	12,398	1,973	15.9
2	Refrigerator cars	680	44	6.5
3	Gondolas	9,795	487	5.0
4	Hoppers	21,608	581	2.7
5	Covered hoppers	3,891	284	7.3
6	Flat cars	593	105	17.7
7	Other revenue cars	330	24	7.3
8	Total-cars	49,295	3,498	7.1

		Number owned or leased	Number serviceable	Number unserviceable
		(a)	(b)	(c)
9	Locomotive units	990	967	23

Note: Freight car data should agree with comparable data in report CS-60 for July 1, 1974. Locomotive data should conform to report OS-C for the second quarter of 1974.

Certified:

Sig. B J Lawler

Title Asst. V.P. & Comptroller

Due date: August 19, 1974

Form 305-A-9

Railroad BALTIMORE & OHIO RAILROAD

TRACK UNDER SLOW ORDERS

As of June 30, 1974

Line No.	Class of track	Number of slow orders	Miles of track covered by slow orders
		(a)	(b)
1	Yard switching tracks ...	None	None
2	Way switching tracks	1	.3
3	Running tracks	71	146.9

Notes: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

Certified:

Sig. _____

Title Asst. V.P. & Comptroller

Due date: August 19, 1974

Form 305-A-10

Railroad The Baltimore and Ohio Railroad Company

ESTIMATED REVENUES TO BE OBTAINED

July 1, 1974 to June 30, 1975

By Quarter

(Dollars and ton-miles in thousands)

Line No.	Item	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)
1	Estimated freight revenues including Ex Parte 305	142,355	151,436	152,991	175,195
2	Estimated ton-miles	7,264,769	7,366,738	7,167,642	7,845,544
3	Estimated revenue per ton-mile (1÷2)	.0196	.0206	.0213	.0223
4	All other revenues -- estimated including Ex Parte 305	6,935	7,272	5,309	6,643
5	Total estimated revenues including Ex Parte 305 (1+4)	149,290	158,708	158,300	181,838
6	Total estimated additional revenues from Ex Parte 305	12,328	13,159	13,205	15,189
7	Total estimated revenues excluding Ex Parte 305 (5-6)	136,962	145,549	145,095	166,649
8	Estimated increase in costs of material and supplies, other than fuel (not to exceed 3 percentage points of the 10-percent authorization)	3,698	3,948	3,962	4,557
9	Allowance for increased income taxes a	-	-	-	-
10	Estimated yield [6-(8+9)]...	8,630	9,211	9,243	10,632
a Estimated income taxes should include the effect of applicable tax benefits. Tax allowance shown on line 9 is to be on an incremental basis and determined as follows:					
	a. Income taxes based on estimated revenues on line 5	258	55	45	56
	b. Income taxes based on estimated revenues on line 7	258	55	45	56
	c. Allowance for increased income taxes a - b	-	-	-	-

Note: Attach hereto full explanation of the methodology employed in arriving at the revenue data shown on lines 1, 4 and 6.

Certified: Sig. _____

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-10

The Baltimore and Ohio Railroad Company

Procedure to arrive at revenue data shown on lines 1, 4 and 6, form 305-A-10:

Estimated revenue for each quarter projected by using revenues same quarter year ago, plus 9.1% added to Merchandise for X-305 effect, 9.7% to Coal, Coke & Iron Ore, and 5% added to Miscellaneous freight revenue. Passenger revenues were not increased.

Form 305-A-11
Sheet 1 (Old)

Railroad THE BALTIMORE AND OHIO RAILROAD COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES
July 1, 1974 to June 30, 1975, by Quarters
(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated EP-305 revenue applied			
		3d Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(201) Superintendence	1,386	1,481	1,436	1,499				
2	(202) Roadway maintenance--Yard switching tracks	81	77	69	77				
3	--Way switching tracks	36	28	30	49				
4	--Running tracks	1,204	963	1,002	1,652				
5	(212) Ties--Yard switching tracks	65	58	30	75				
6	--Way switching tracks	24	18	8	43				
7	--Running tracks	813	805	277	1,431				
8	(214) Rails--Yard switching tracks	60	100	92	78				
9	--Way switching tracks	46	351	7	45				
10	--Running tracks	1,545	(1,175)	98	803				
11	(216) Other track material--Yard switching tracks	127	55	120	61				
12	--Way switching tracks	11	32	21	25				
13	--Running tracks	360	1,061	699	839				
14	(220) Track laying and surfacing--Yard switching tracks	319	662	372	532				
15	--Way switching tracks	114	119	100	137				
16	--Running tracks	3,795	3,978	3,344	4,574				
17	(206-208-210-218-221) Other track accounts	36	30	33	44				
18	--Yard switching tracks	50	31	26	40				
19	--Way switching tracks	1,748	1,706	931	1,635				
20	--Running tracks	688	762	646	868				
21	Sub-totals (Lines 2 to 20)--Yard switching tracks	281	193	188	318				
22	-- Way switching tracks	9,465	6,636	6,552	10,736				
23	-- Running tracks	401	290	275	268				
24	(223) Stations and office buildings	311	223	220	293				
25	(235) Shops and enginehouses	286	483	571	564				
26	(243) Communication systems	1,150	1,551	1,321	1,321				
27	(249) Signals and interlockers	422	557	572	631				
28	(260) Roadway machines	505	640	487	861				
29	(271) Small tools and supplies	505	681	669	666				
30	(272) Employees' health and welfare benefits		597	1,356	1,079				
31	(227-242, excluding above and 266, 267, 278 and 279) Other maintenance accounts	1,020	6,822	5,271	5,442				
32	Sub-total (Lines 24 to 31)	4,480	777	818	657				
33	(278) Maintaining joint tracks, yards and other facilities - Dr.	679	292	340	317				
34	(279) Maintaining joint tracks, yards and other facilities - Cr.	318	485	478	340				
35	Sub-total (Lines 33 + 34)	361	16,339	14,641	19,222				
36	Total of above (Lines 1 + 21 + 22 + 23 + 32 + 35)	16,861	3,094	1,699	1,858				
37	(266-267) Depreciation and retirements	1,843							
38	Grand total - Maintenance of way and structures (Lines 36 + 37)	18,704	17,673	16,140	21,080				
39	Payroll taxes apportioned to above	1,210	1,364	1,609	1,559				

Note: Estimated expenditures expressed in terms of July 1974 dollars.

Due date:

Certified: Sig. _____ Title Asst. Vice President & Controller

Form 305-A-11
Sheet 2 (M,E)

Railroad THE BALTIMORE AND OHIO RAILROAD COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

July 1, 1974 to June 30, 1975, by Quarters

(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated XP-305 revenues applied			
		3d Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(301) Superintendence	896	1,024	998	1,019				
2	(302) Shop machinery	213	242	287	299				
3	(311) Locomotives - Repairs--Yard	1,284	1,405	1,265	1,494				
4	--Other	3,801	4,264	4,696	4,747				
5	(314) Freight train cars - Repairs	7,173	8,728	8,455	8,585				
6	(317) Passenger train cars - Repairs	133	158	142	124				
7	(335) Employees' health and welfare benefits	564	550	549	543				
8	Sub-total (Lines 1 to 7)	14,064	16,371	16,392	16,811				
9	(304-306-316-323-326-328-329-332-333-334-339) Other maintenance accounts	1,476	1,241	1,519	1,246				
10	Total (Lines 8 + 9)	15,540	17,612	17,911	18,057				
11	(336) Joint maintenance of equipment expenses - Dr.	(24)	203	161	172				
12	(337) Joint maintenance of equipment expenses - Cr.	71	59	72	71				
13	Sub-total (Lines 11 - 12)	(95)	144	89	101				
14	(305-330-331) Depreciation and retirements	2,855	2,896	2,874	2,778				
15	Grand total (Lines 10 + 13 + 14)	18,300	20,652	20,874	20,936				
16	Payroll taxes apportioned to above	1,210	1,366	1,655	1,810				

Note: Estimated expenditures expressed in terms of July 1974 dollars.

Certified: Sig. [signature]

Title Asst. Vice-President & Comptroller

Due date:

264

Form 305-A-11
Sheet 3 (Cap.)

Railroad BALTIMORE AND OHIO RAILROAD COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

July 1, 1974 to June 30, 1975, by Quarters

(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated XP-305 revenues applied			
		3d Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(3) Grading	$ 50	$ 50	$ 50	$ 100				
2	(6) Bridges, trestles and culverts	100	-	50	50				
3	(8) Ties	50	25	25	100				
4	(9) Rails	250	150	225	325				
5	(10) Other track material	250	150	225	325				
6	(11) Ballast	75	25	100	100				
7	(12) Track laying and surfacing	100	75	200	225				
8	(20) Shops and enginehouses	50	-	25	25				
9	(25) TOFC/COFC terminals	-	-	-	-				
10	(26) Communication systems	600	400	325	475				
11	(27) Signals and interlockers	200	100	150	150				
12	(29) Power plants	-	-	-	-				
13	(37) Roadway machines	20	10	10	10				
14	(44) Shop machinery	15	15	15	15				
15	(45) Power-plant machinery	-	-	-	-				
16	All other road	140	200	100	100				
17	Total - road expenditures	1,900	1,200	1,500	2,000				
	Equipment								
18	(52) Locomotives	-	-	-	20,400				
19	(53) Freight train cars	100	1,700	4,750	-				
20	(55) Highway revenue equipment	-	-	-	-				
21	(57) Work equipment	-	-	-	-				
22	All other equipment	-	-	-	-				
23	Total - equipment expenditures	100	1,700	4,750	20,400				
24	Total - general expenditures	2,000	2,900	6,250	22,400				
25	(80) Other elements of investment	-	-	-	-				
26	(90) Construction work in progress	-	-	-	-				
27	Grand total - All investment accounts	$ 2,000	$ 2,900	$ 6,250	$ 22,400				

Note: Amount reported should conform to content of expenditures for additions and betterments as reported in quarterly CBS reports, including expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines. Estimated expenditures expressed in terms of July 1974 dollars.

Certified: Sig. [signature]

Title Asst. Vice President & Comptroller

Due date:

265

Form 305-A-1

Railroad Western Maryland Railway Company

INCREASE OR DECREASE IN COST OF MATERIALS AND SUPPLIES
OTHER THAN FUEL, DUE TO PRICE CHANGES

Month	Amount (thousands)
	Increase
1973:	
October	$ 5
November	14
December	14
1974:	
January	41
February	54
March	104
April	131
May	230
June	145

If estimated, explain procedure:

Price changes calculated on the basis of increases in AAR indices for materials other than fuel. Total operating expenses less payroll and other nonpurchased type expenses was used as the base "materials" cost. This figure is regarded as compatible with materials, supplies, and other purchases used by AAR in developing price indices.

Note: Calculation of increased material cost should be consistent with carrier evidence in Ex Parte 305 which was based on price increases subsequent to October 1, 1973.

Certified:

Sig. B. Lamb

Title Asst. Vice President & Comptroller

Due date: August 19, 1974

Form 305-A-2

Railroad WESTERN MARYLAND RAILWAY COMPANY

MAINTENANCE OF WAY EXPENSES, BY QUARTERS, 1971-1974
(Dollars in thousands)

Line No.	Account	1971 1st Q (a)	1971 2nd Q (b)	1971 3rd Q (c)	1971 4th Q (d)	1972 1st Q (e)	1972 2nd Q (f)	1972 3rd Q (g)	1972 4th Q (h)	1973 1st Q (i)	1973 2nd Q (j)	1973 3rd Q (k)	1973 4th Q (l)	1974 1st Q (m)	1974 2nd Q (n)
1	(201) Superintendence	145	146	146	157	156	146	126	127	127	129	136	127	130	129
2	(202) Roadway maintenance--Yard switching tracks	11	10	14	5	7	7	4	5	8	9	8	7	7	8
3	--Key switching tracks	8	7	11	6	5	5	4	6	6	6	6	5	5	6
4	--Running tracks	182	177	203	69	103	104	79	72	116	135	122	124	100	122
5	(212) Ties--Yard switching tracks	1	2	4	10	1	3	4	12	1	9	9	9	2	2
6	--Key switching tracks	1	2	3	15	1	3	4	9	1	6	7	6	2	2
7	--Running tracks	18	24	112	269	18	22	81	174	16	127	122	130	27	31
8	(214) Rails--Yard switching tracks	1	2	5	18	1	1	1	5	1	1	-	-	1	1
9	--Key switching tracks	1	2	3	5	1	1	1	4	1	1	-	-	1	1
10	--Running tracks	11	107	63	133	19	190	23	70	16	16	7	(33)	16	16
11	(216) Other track material--Yard switching tracks	3	6	7	6	4	6	4	4	4	4	3	2	2	2
12	--Key switching tracks	2	4	2	3	3	4	3	3	3	3	2	1	1	1
13	--Running tracks	47	82	42	63	61	86	53	63	61	36	37	27	22	22
14	(220) Track laying and surfacing--Yard switching tracks	18	30	28	30	22	28	25	30	22	27	28	22	28	32
15	--Key switching tracks	13	21	19	21	16	19	18	21	16	19	16	16	19	23
16	--Running tracks	237	428	371	620	316	383	382	620	316	385	383	383	396	452
17	(206-208-210-218-221) Other track accounts	4	5	7	5	5	6	6	5	5	8	8	7	5	6
18	--Yard switching tracks	5	8	6	4	4	5	3	4	5	5	4	5	4	6
19	--Key switching tracks	61	109	63	79	70	79	71	79	70	101	79	79	63	82
20	--Running tracks	28	46	47	46	43	62	48	61	43	57	51	45	43	57
21	Sub-totals (Lines 2 to 20)--Yard switching tracks	38	68	67	66	61	82	65	83	61	38	35	32	29	36
22	-- Key switching tracks	556	952	900	1,147	875	932	669	875	593	793	715	661	598	770
23	-- Running tracks	69	59	50	44	56	55	55	56	53	62	71	61	62	69
24	(227) Stations and office buildings	53	63	67	61	61	61	53	61	38	29	43	32	42	29
25	(233) Shops and enginehouses	38	36	31	44	33	40	40	40	40	27	28	26	30	30
26	(247) Communication systems	69	69	38	48	45	59	45	48	40	39	30	36	40	117
27	(249) Signals and interlockers	63	69	54	54	59	59	45	54	53	61	53	53	48	56
28	(260) Roadway machines	55	67	63	70	65	77	77	65	53	50	48	48	34	35
29	(253) Small tools and supplies	65	67	70	70	65	77	77	65	70	66	68	75	74	67
30	(255) Removing snow, ice and sand	648	302	183	133	510	106	133	(171)	510	293	(311)	133	150	147
31	(227-262, excluding above and 265, 267, 270 and 275) Other maintenance accounts	1,060	647	516	644	871	428	420	134	871	607	35	644	519	535
32	Sub-total (Lines 24 to 31)	37	69	23	30	29	29	22	35	29	28	32	30	30	33
33	(275) Maintaining joint tracks, yards and other facilities - Dr.	(19)	-	-	-	(1)	(1)	-	(1)	(1)	(1)	(1)	-	(1)	-
34	(276) Maintaining joint tracks, yards and other facilities - Cr.	18	22	22	22	25	28	22	26	25	27	29	30	29	23
35	Sub-total (Lines 33 + 34)	(1)	22	22	22	24	27	22	25	24	26	28	30	28	23
36	Total of above (Lines 1 + 21 + 22 + 23 + 32 + 35)	1,865	1,714	1,377	1,377	1,376	1,663	1,316	1,376	1,691	1,651	1,601	1,377	1,348	1,426
37	(240-267) Depreciation and retirements	498	197	205	205	216	288	198	216	268	209	202	205	200	255
38	Grand total - Maintenance of way and structures (Lines 36 + 37)	2,363	1,911	1,582	1,582	1,592	1,951	1,514	1,592	1,959	1,851	1,803	1,582	1,548	1,729
39	Freight expense 2	2,261	1,911	1,582	1,582	1,592	1,951	1,514	1,592	1,959	1,851	1,803	1,582	1,548	1,729
40	Passenger expense 2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
41	Payroll taxes apportioned to above	130	136	136	148	135	135	135	135	136	135	135	148	146	155

2 - Separation between freight and passenger service may be estimated. (Explain procedure).

Certified: Sig. B. Lamb

Title Asst. Vice President & Comptroller

Due date: August 19, 1974

Form 305-A-3

Railroad WESTERN MARYLAND RAILWAY COMPANY

MAINTENANCE OF EQUIPMENT EXPENSES, BY QUARTERS, 1971-1974

(Dollars in thousands)

Line No.	Account	1971				1972				1973				1974	
		1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	(301) Superintendence	116	113	119	118	113	101	93	99	95	92	96	96	90	94
2	(302) Shop machinery	51	47	51	49	51	63	49	41	36	42	48	44	41	25
3	(310) Locomotives - Repairs--Yard	138	123	112	108	95	95	85	87	85	74	71	70	77	96
4	--Other	675	597	565	520	541	537	484	491	440	423	401	396	434	532
5	(314) Freight train cars - Repairs	1,176	1,129	980	900	906	869	747	682	964	853	746	827	780	947
6	(315) Passenger train cars - Repairs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7	(335) Employees' health and welfare benefits	75	97	97	87	63	99	108	101	88	84	88	90	85	80
8	Sub-total (Lines 1 to 7)	2,233	2,106	1,924	1,780	1,767	1,744	1,566	1,501	1,748	1,568	1,450	1,523	1,507	1,732
9	(330-306-316-323-326-328-329-332-335-336-339) Other maintenance accounts	198	161	154	205	164	146	127	205	116	148	144	233	209	118
10	Total (Lines 8 + 9)	2,431	2,267	2,078	1,985	1,931	1,890	1,693	1,706	1,864	1,716	1,594	1,756	1,716	1,850
11	(335) Joint maintenance of equipment expenses - Dr.	8	8	5	5	6	6	6	6	6	7	7	6	9	8
12	(337) Joint maintenance of equipment expenses - Cr.	(5)	(5)	(3)	(8)	(17)	(16)	(19)	(20)	(17)	(19)	(16)	(17)	(17)	(16)
13	Sub-total (Lines 11 + 12)	3	3	2	(3)	(11)	(10)	(13)	(14)	(11)	(12)	(9)	(11)	(8)	(8)
14	(305-330-331) Depreciation and retirements	915	904	912	889	910	903	903	863	872	873	871	796	811	875
15	Grand total (Lines 10 + 13 + 14)	3,349	3,174	2,972	2,871	2,830	2,783	2,583	2,537	2,730	2,577	2,456	2,541	2,519	2,673
16	Freight expense *	3,349	3,174	2,972	2,871	2,830	2,783	2,583	2,537	2,730	2,577	2,456	2,541	2,519	2,673
17	Passenger expense *	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18	Payroll taxes apportioned to above	150	168	189	166	125	160	177	148	168	172	178	221	246	236

* - Separation between freight and passenger service may be estimated. (Explain procedure).

Certified Sig. [signature]

Title Asst. Vice President & Comptroller

Due date: August 19, 1974

268

Form 305-A-4

Railroad Western Maryland Railway Company

CAPITAL EXPENDITURES, BY QUARTERS, 1971-1974

(Dollars in thousands)

Line No.	Account	1971				1972				1973				1974	
		1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q	3rd Q	4th Q	1st Q	2nd Q
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	(1) Grading			2											
2	(6) Bridges, trestles and culverts		2		15	2									
3	(9) Ties	2	3	5	2	6	1	1	(1)	2	4	(1)	2		
4	(9) Rails		3	1	1	1	2					10	24		
5	(10) Other track material	2	14	14	9	1	12	4	6		2	10	10		
6	(11) Ballast				3	1		(1)			6				
7	(12) Track laying and surfacing	1	4	4	8	4	(1)	1	(2)	2			1		4
8	(20) Shops and enginehouses	25	21	8	10	3	2	1	5	1	2				(4)
9	(25) TOFC/COFC terminals		9	351	18				1						
10	(26) Communication systems	2	2	39	9	3					(1)	1	1		
11	(27) Signals and interlockers	1	4						155	2	1				
12	(29) Power plants	47	44	205	1	2	2		28		3	32			
13	(37) Roadway machines	56	5	1	4			3	(6)			(12)			
14	(44) Shop machinery			4				(1)							
15	(45) Power-plant machinery	96	17	(251)	(15)	27	152	5	(122)		13	9	24		
16	All other road														
17	Total - road expenditures	232	129	385	65	50	170	13	74	7	30	49	62		
	Equipment														
18	(52) Locomotives			1,260	15	81			13		1	4			
19	(53) Freight train cars	758	1,435	533	574	417	2	3	9				93	11	4
20	(55) Highway revenue equipment														
21	(57) Work equipment		10	2	55	3									
22	All other equipment	7	34	34	37	16	40		9		34	29	2	11	
23	Total - equipment expenditures	765	1,479	1,837	681	517	42	3	31		35	33	95		4
24	Total - general expenditures								(2)						
25	(80) Other elements of investment														
26	(90) Construction work in progress				(61)				4						
27	Grand total - All investment accounts	997	1,607	2,202	685	567	212	16	107	7	65	82	157	11	4

Note: Amount reported should conform to content of expenditures for additions and betterments as reported in quarterly CBS reports, including expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.

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Title Asst. V.P. & Comptroller

Due date: August 19, 1974

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Form 305-A-5

COSTS AND UNITS OF TIES AND RAILS LAID, BY QUARTERS, 1973-1974

(Dollars in thousands)

Line No.	Item	Source of annual data	1974 1st Q (a)	1974 2nd Q (b)	1973 1st Q (c)	1973 2nd Q (d)	1973 3rd Q (e)	1973 4th Q (f)	1972 1st Q (g)	1972 2nd Q (h)	1972 3rd Q (i)	1972 4th Q (j)	1971 1st Q (k)	1971 2nd Q (l)	1971 3rd Q (m)	1971 4th Q (n)
1	TOTAL COST OF TIES LAID		23	23	12	171	128	78	10	151	115	69	19	182	145	88
2	In replacement		5	5	1	17	13	7	-	10	8	5	5	16	29	17
3	Cross ties	Sch. 515, col. (d)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4	Switch and bridge ties	Sch. 515, col. (e)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5	In additional tracks		-	-	-	4	2	-	-	3	2	1	-	4	5	2
6	Cross ties	Sch. 516, col. (d)	-	-	-	2	1	-	-	1	1	-	-	2	3	1
7	Switch and bridge ties	Sch. 516, col. (e)	-	-	-	2	1	-	-	2	1	1	-	2	2	1
8	TOTAL COST OF RAILS LAID		17	23	4	58	44	26	7	101	76	45	16	238	179	105
9	In replacement		3	5	-	2	1	1	-	6	5	3	-	7	5	3
10	Running tracks, etc.	Sch. 515, col. (d)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11	Yard tracks, etc.	Sch. 515, col. (f)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
12	In additional tracks		-	-	-	2	1	-	-	1	-	-	-	2	-	-
13	Running tracks, etc.	Sch. 516, col. (d)	-	-	-	2	1	-	-	1	-	-	-	2	-	-
14	Yard tracks, etc.	Sch. 516, col. (f)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15	TOTAL TIES LAID		1,525	2,953	22,352	18,784	10,187	1,054	1,583	23,206	17,605	10,54	2,093	30,690	21,018	13,950
16	In replacement		4,354	16,818	63,448	47,855	29,027	28,030	4,040	59,267	46,435	28,993	12,569	186,343	138,257	65,792
17	Cross ties (number)	Sch. 515, col. (b)	27	793	391	293	177	-	33	481	361	218	52	765	574	348
18	Do. and br. ties (fbm.)	Sch. 515, col. (c)	-	5,869	3,722	-	-	-	286	4,199	3,143	2,905	515	8,401	6,361	3,819
19	In additional tracks		55	535	805	606	368	700	64	935	701	426	136	1,996	1,497	909
20	Cross ties (number)	Sch. 516, col. (b)	5	99	66	49	33	14	7	98	73	44	10	147	110	67
21	Do. and br. ties (fbm.)	Sch. 516, col. (c)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22	TOTAL RAILS LAID		-	19	16	-	-	-	-	-	-	-	-	35	26	16
23	In replacement		-	19	16	-	-	-	-	-	-	-	-	35	26	16
24	Running track, etc. (tons)	Sch. 515, col. (e)	-	19	16	-	-	-	-	-	-	-	-	35	26	16
25	Yard tracks, etc. (tons)	Sch. 515, col. (g)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26	In additional tracks		-	-	-	-	-	-	-	-	-	-	-	-	-	-
27	Running tracks, etc. (tons)	Sch. 516, col. (e)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
28	Yard tracks, etc. (tons)	Sch. 516, col. (g)	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Railroad Western Maryland Railway Company

Certified: Sig. [signature]

Title Asst. Vice President & Comptroller

Due date: August 30, 1974

Railroad Western Maryland Railway Company Form 305-A-6

DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

As of June 30, 1974

Line No.	Item	Amount (thousands)	Amount in col. (a) represented by facilities covered by pending petitions for abandonment
		(a)	(b)
1	Yard switching tracks	Respondent has nothing to report on this schedule	
2	Way switching tracks		
3	Running tracks		
4	Sub-total (Lines 1 to 3) a		
5	Bridges and tunnels		
6	Buildings		
7	Shops and enginehouses		
8	Wharves and docks		
9	Communications and signalling		
10	All other roadway accounts		
11	Total - road (Lines 1 to 10)		
12	Freight train cars:		
13	Box cars		xxx
14	Refrigerator cars		xxx
15	Gondolas		xxx
16	Hoppers		xxx
17	Covered hoppers		xxx
18	Flat cars		xxx
19	All other		xxx
20	Sub-total (Lines 13 to 19)		xxx
21	Locomotives		xxx
22	Work equipment		xxx
23	All other equipment		xxx
24	Total - equipment (Lines 20 to 23)		xxx
25	Grand total (Lines 11 + 24)		

Note: Costs expressed in terms of wage rates and prices as of 6/30/74.

a - Number of cross ties		
Switch and bridge ties (Ft.B.M.)		
Tons of rail		

Certified: Sig. [signature]

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-7

Railroad Western Maryland Railway Company

DELAYED CAPITAL IMPROVEMENTS

As of June 30, 1974

Line No.	Account	Amount (thousands)
1	(3) Grading	
2	(6) Bridges, trestles and culverts	
3	(8) Ties	
4	(9) Rails	Respondent
5	(10) Other track material	
6	(11) Ballast	
7	(12) Track laying and surfacing	has
8	(20) Shops and enginehouses	
9	(25) TOFC/COFC terminals	
10	(26) Communication systems	
11	(27) Signals and interlockers	nothing to
12	(29) Power plants	
13	(37) Roadway machines	
14	(44) Shop machinery	
15	(45) Power-plant machinery	report
16	All other road	
17	Total-road expenditures	
	Equipment	
18	(52) Locomotives	on this
19	(53) Freight train cars	
20	(55) Highway revenue equipment	
21	(57) Work equipment	
22	All other equipment	schedule
23	Total-equipment expenditures	
24	Total-general expenditures	
25	(80) Other elements of investment	
26	(90) Construction work in progress	
27	Grand total-all investment accounts..	

Certified:

Sig. B J Lawler

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-8

Railroad WESTERN MARYLAND RAILWAY COMPANY

EQUIPMENT DATA

As of June 30, 1974

Line No.	Type of equipment	Number owned or leased	Home cars undergoing or awaiting repairs	
			Number	Percent
		(a)	(b)	(c)
1	Box cars	1,188	80	6.7
2	Refrigerator cars	50	1	2.0
3	Gondolas	966	109	11.3
4	Hoppers	5,195	430	8.3
5	Covered hoppers	772	17	2.2
6	Flat cars	217	29	13.4
7	Other revenue cars	76	2	2.6
8	Total-cars	8,464	668	7.9

		Number owned or leased	Number serviceable	Number unserviceable
		(a)	(b)	(c)
9	Locomotive units	119	118	1

Note: Freight car data should agree with comparable data in report CS-60 for July 1, 1974. Locomotive data should conform to report OS-C for the second quarter of 1974.

Certified:

Sig. B J Lawler

Title Asst. V.P. & Comptroller

Due date: August 19, 1974

Form 305-A-9

Railroad WESTERN MARYLAND RAILWAY

TRACK UNDER SLOW ORDERS

As of June 30, 1974

Line No.	Class of track	Number of slow orders	Miles of track covered by slow orders
		(a)	(b)
1	Yard switching tracks ...	None	None
2	Way switching tracks	None	None
3	Running tracks	4	.6

Notes: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

Certified:

Sig. [signature]

Title Asst. V.P. & Comptroller

Due date: August 19, 1974

Form 305-A-10

Railroad Western Maryland Railway Company

ESTIMATED REVENUES TO BE OBTAINED

July 1, 1974 to June 30, 1975

By Quarter

(Dollars and ton-miles in thousands)

Line No.	Item	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)
1	Estimated freight revenues including Ex Parte 305	$ 13,707	$ 14,786	$ 17,322	$ 18,267
2	Estimated ton-miles	763,325	791,658	1,006,750	933,219
3	Estimated revenue per ton-mile (1÷2)	.0180	.0187	.0172	.0196
4	All other revenues -- estimated including Ex Parte 305	939	798	1,147	1,175
5	Total estimated revenues including Ex Parte 305 (1+4)	14,646	15,584	18,469	19,442
6	Total estimated additional revenues from Ex Parte 305	1,209	1,291	1,527	1,608
7	Total estimated revenues excluding Ex Parte 305 (5-6)	13,437	14,293	16,942	17,834
8	Estimated increase in costs of material and supplies, other than fuel (not to exceed 3 percentage points of the 10-percent authorization)	363	387	458	482
9	Allowance for increased income taxes a	406	434	513	540
10	Estimated yield [6-(8+9)]...	440	470	556	586
	a Estimated income taxes should include the effect of applicable tax benefits. Tax allowance shown on line 9 is to be on an incremental basis and determined as follows:				
	a. Income taxes based on estimated revenues on line 5	698	698	1,561	1,671
	b. Income taxes based on estimated revenues on line 7	292	264	1,048	1,131
	c. Allowance for increased income taxes a - b	406	434	513	540

Note: Attach hereto full explanation of the methodology employed in arriving at the revenue data shown on lines 1, 4 and 6.

Certified: Sig. [signature]

Title Asst. V.P. & Comptroller

Due date:

Form 305-A-10

Western Maryland Railway Company

Procedure to arrive at revenue data shown on lines 1, 4 and 6, form 305-A-10:

Estimated revenue for each quarter projected by using revenues same quarter year ago, plus 9.1% added to Merchandise for X-305 effect, 9.7% to Coal, Coke & Iron Ore, and 5% added to Miscellaneous freight revenue. Passenger revenues were not increased.

Form 305-A-11
Sheet 1 (Rev.)

Railroad WESTERN MARYLAND RAILWAY COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES
July 1, 1974 to June 30, 1975, by Quarters
(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated EP-305 revenues applied			
		3d Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(201) Superintendence	136	127	130	170				
2	(202) Roadway maintenance--Yard switching tracks	6	5	7	8				
3	--Way switching tracks	6	6	5	6				
4	--Running tracks	82	71	100	122				
5	(212) Ties--Yard switching tracks	9	9	2	2				
6	--Way switching tracks	7	6	2	2				
7	--Running tracks	127	130	27	31				
8	(214) Rails--Yard switching tracks	-	-	(13)	-				
9	--Way switching tracks	7	(5)	(16)	-				
10	--Running tracks	2	2	2	1				
11	(216) Other track material--Yard switching tracks	3	2	22	14				
12	--Way switching tracks	2	1	28	22				
13	--Running tracks	32	29	19	16				
14	(220) Track laying and surfacing--Yard switching tracks	27	22	396	317				
15	--Way switching tracks	18	16						
16	--Running tracks	365	317						
17	(204-208-210-218-221) Other track accounts	6	7	5	6				
18	--Yard switching tracks	4	5	6	6				
19	--Way switching tracks	79	99	69	82				
20	--Running tracks	51	65	63	69				
21	Sub-totals (Lines 2 to 20)--Yard switching tracks	35	32	29	36				
22	-- Way switching tracks	715	641	598	708				
23	-- Running tracks	31	61	61	69				
24	(227) Stations and office buildings	63	32	62	69				
25	(235) Shops and engine houses	28	26	58	68				
26	(237) Communication system	39	36	53	63				
27	(239) Signals and interlockers	53	51	54	64				
28	(241) Power plants	58	58	117	137				
29	(243) Power-driven machines	73	75	82	97				
30	(271) Small tools and supplies								
31	(277) Employees' health and welfare benefits	(311)	133	147	173				
	(227-232, excluding above and 246, 267, 278 and 279) Other maintenance accounts		666	538	633				
32	Sub-total (Lines 24 to 31)	32	30	35	41				
33	(278) Maintaining joint tracks, yards and other facilities - Dr.	(31)	30	1,326	1,560				
34	(279) Maintaining joint tracks, yards and other facilities - Cr.	1,902	1,339	205	241				
35	Sub-total (Lines 33 + 34)	202	205						
36	Total of above (Lines 1 + 21 + 22 + 23 + 32 + 35)	1,203	1,344	1,729	2,035				
37	(246-267) Depreciation and retirements	348	186	195	229				
38	Grand total - Maintenance of way and structures (Lines 36 + 37)								
39	Payroll taxes apportioned to above								

Note: Estimated expenditures expressed in terms of July 1974 dollars.

Due date:

Certified: Signed: S. T. Crawford

Title Asst. Vice President & Comptroller

BEST COPY AVAILABLE

Railroad WESTERN MARYLAND RAILWAY COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

July 1, 1974 to June 30, 1975, by Quarters

(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated EP-305 revenues applied			
		3d Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(301) Superintendence	96	96	90	54				
2	(302) Shop machinery	48	44	41	25				
3	(311) Locomotives - Repairs--Yard	71	70	77	94				
4	--Other	401	396	434	532				
5	(314) Freight train cars - Repairs	746	827	780	947				
6	(317) Passenger train cars - Repairs	-	-	-	-				
7	(335) Employees' health and welfare benefits	88	90	85	80				
8	Sub-total (Lines 1 to 7)	1,450	1,523	1,507	1,732				
9	(304-306-318-323-326-328-329-332-333-336-339) Other maintenance accounts	144	233	209	118				
10	Total (Lines 8 + 9)	1,594	1,756	1,716	1,850				
11	(338) Joint maintenance of equipment expenses - Dr.	7	6	9	6				
12	(337) Joint maintenance of equipment expenses - Cr.	(16)	(17)	(17)	(18)				
13	Sub-total (Lines 11 - 12)	(9)	(11)	(8)	(12)				
14	(305-330-331) Depreciation and retirements	871	796	811	835				
15	Grand total (Lines 10 + 13 + 14)	2,456	2,541	2,519	2,673				
16	Payroll taxes apportioned to above	178	221	244	234				

Note: Estimated expenditures expressed in terms of July 1974 dollars.

Certified: Sig. B F Gamble

Title Asst. Vice President & Comptroller

Due date:

Railroad WESTERN MARYLAND RAILWAY COMPANY

ESTIMATED TOTAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

July 1, 1974 to June 30, 1975, by Quarters

(Dollars in thousands)

Line No.	Account	Estimated total expenditures				Estimated EP-305 revenues applied			
		3d Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975	3rd Q 1974	4th Q 1974	1st Q 1975	2nd Q 1975
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	(3) Grading								
2	(6) Bridges, trestles and culverts								
3	(8) Ties								
4	(9) Rails								
5	(10) Other track material								
6	(11) Ballast								
7	(12) Track laying and surfacing								
8	(20) Shops and enginehouses								
9	(25) TOFC/COFC terminals								
10	(26) Communication systems								
11	(27) Signals and interlockers								
12	(29) Power plants								
13	(37) Roadway machines								
14	(44) Shop machinery								
15	(45) Power-plant machinery								
16	All other road								
17	Total - road expenditures	$ -	$ -	$ -	$ -				
	Equipment								
18	(52) Locomotives	$ -	$ -	$ -	$ -				
19	(53) Freight train cars	1,000	-	-	-				
20	(55) Highway revenue equipment	-	-	-	-				
21	(57) Work equipment	-	-	-	-				
22	All other equipment	-	-	-	-				
23	Total - equipment expenditures	1,000	-	-	-				
24	Total - general expenditures	1,000	-	-	-				
25	(80) Other elements of investment	-	-	-	-				
26	(90) Construction work in progress	-	-	-	-				
27	Grand total - All investment accounts	$ 1,000	$ -	$ -	$ -				

Note: Amount reported should conform to context of expenditures for additions and betterments as reported in quarterly CBS reports, including expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines. Estimated expenditures expressed in terms of July 1974 dollars.

Certified: Sig. B F Gamble

Title Asst. Vice President & Comptroller

Due date:

PAGE 1 of 10

INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE A - REVENUES OBTAINED[a] *(Report dollars and ton-miles in thousands)*	NAME OF RAILROAD The Chesapeake and Ohio Railway Company QUARTER ENDING September 30 1974

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 147,405
2.	REVENUE TON-MILES FOR THIS QUARTER.....	7,829,029
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.01884 ¢
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 8,184
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	155,670
6.	TOTAL REVENUES FROM EX PARTE 305.....	13,617
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 4,158
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	6,996
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	2,463
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ 556
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	167
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF July	$ 1,963
13.	FOR THE MONTH OF August	1,868
14.	FOR THE MONTH OF September	2,032
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 5,863

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 160.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

The Chesapeake and Ohio Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended September 30, 1974

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD: The Chesapeake and Ohio Railway Company

QUARTER ENDING: September 30 — 1974

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS I...	(THOUSANDS)
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD: The Chesapeake and Ohio Railway Company

QUARTER ENDING: September 30 1974

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. *Costs expressed in terms of wage rates and prices as of*_____

2. *Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.*

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
September 30 1974

LINE NO.	ACCOUNT	AMOUNT (Dollars in Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
The Chesapeake and Ohio Railway Co.

QUARTER ENDING
September 30 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) (Dollars in Thousands)	EX PARTE NO. 305 REVENUES APPLIED[1] (b) (Thousands)
1.	(201) SUPERINTENDENCE	$ 1 388	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	28	
3.	- WAY SWITCHING TRACKS	41	
4.	- RUNNING TRACKS	789	
5.	(212) TIES - YARD SWITCHING TRACKS	138	
6.	- WAY SWITCHING TRACKS	31	
7.	- RUNNING TRACKS	601	
8.	(214) RAILS - YARD SWITCHING TRACKS	24	
9.	- WAY SWITCHING TRACKS	(18)	
10.	- RUNNING TRACKS	(345)	
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	87	
12.	- WAY SWITCHING TRACKS	24	
13.	- RUNNING TRACKS	464	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	132	
15.	- WAY SWITCHING TRACKS	163	
16.	- RUNNING TRACKS	3 193	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	23	Nothing
19.	- WAY SWITCHING TRACKS	46	to
20.	- RUNNING TRACKS	898	Report
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	432	
22.	- WAY SWITCHING TRACKS	287	
23.	- RUNNING TRACKS	5 600	
24.	(227) STATIONS AND OFFICE BUILDINGS	307	
25.	(235) SHOPS AND ENGINEHOUSES	266	
26.	(247) COMMUNICATION SYSTEMS	486	
27.	(249) SIGNALS AND INTERLOCKERS	1 161	
28.	(269) ROADWAY MACHINES	472	
29.	(271) SMALL TOOLS AND SUPPLIES	652	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	438	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	1 679	
32.	SUB-TOTAL (LINES 24 to 31)	5 461	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	889	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(305)	
35.	SUB-TOTAL (LINES 33 and 34)	584	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	13 752	
37.	(266-267) DEPRECIATION AND RETIREMENTS	2 259	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	16 011	
39.	FREIGHT EXPENSE[2]	16 006	
40.	PASSENGER EXPENSE[2]	5	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 459	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: The Chesapeake and Ohio Railway Co.

QUARTER ENDING: September 30 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 996	$
2.	(302) SHOP MACHINERY	420	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1 437	
4.	-- OTHER	5 012	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	9 079	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	640	
8.	SUB-TOTAL (LINES 1 to 7)	17 584	Nothing
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	1 345	to
10.	TOTAL (LINES 8 + 9)	18 929	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR.	107	Report
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR.	(22)	
13.	SUB-TOTAL (LINES 11 - 12)	85	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	6 093	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	25 107	
16.	FREIGHT EXPENSE[2]	25 064	
17.	PASSENGER EXPENSE[2]	43	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 2 122	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*

2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (10/74)

PAGE 7 of 17

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Chesapeake and Ohio Railway Co.

QUARTER ENDING: September 30 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED[2] DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED[2] NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 459	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	333		
3.	(8) TIES	69		
4.	(9) RAILS	385	Nothing	
5.	(10) OTHER TRACK MATERIAL	243		
6.	(11) BALLAST	113		
7.	(12) TRACK LAYING AND SURFACING	143		
8.	(20) SHOPS AND ENGINEHOUSES	111		
9.	(25) TOFC/COFC TERMINALS	-		
10.	(26) COMMUNICATION SYSTEMS	23		
11.	(27) SIGNALS AND INTERLOCKERS	(98)		
12.	(29) POWER PLANTS	(1)		
13.	(37) ROADWAY MACHINES	180		
14.	(44) SHOP MACHINERY	(10)		
15.	(45) POWER-PLANT MACHINERY	1	to	
16.	ALL OTHER ROAD	417		
17.	TOTAL - ROAD EXPENDITURES	2,368		
	EQUIPMENT			
18.	(52) LOCOMOTIVES	(6)		
19.	(53) FREIGHT TRAIN CARS	2,351		
20.	(55) HIGHWAY REVENUE EQUIPMENT	-	Report	
21.	(57) WORK EQUIPMENT	226		
22.	ALL OTHER EQUIPMENT	401		
23.	TOTAL - EQUIPMENT EXPENDITURES	2,972		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	(347)		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 4,993	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in column (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

NAME OF RAILROAD
C&O

QUARTER ENDING
September 30, 1974

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 610	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	186	Nothing
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	109	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	37	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	1432	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	37	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	89	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 62	$
			(WHOLE NUMBERS)	
15.	TOTAL TIES LAID			
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	79482	to
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	840423	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	16653	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	176260	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	11467	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	340	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	433	Report
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	561	
29.	TOTAL (LINES 3 through 28)[2]			

1. Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 715, Capital and Other Reserve Funds.

2. Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
September 30, 1974

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS: NUMBER (b)	HOME CARS UNDERGOING OR AWAITING REPAIRS: PERCENT (c)
1.	BOX CARS	13,124	1,094	8.3
2.	REFRIGERATOR CARS	1,282	78	6.1
3.	GONDOLAS	6,735	582	8.6
4.	HOPPERS	45,051	484	1.1
5.	COVERED HOPPERS	2,986	214	7.2
6.	FLAT CARS	834	103	12.4
7.	OTHER REVENUE CARS	618	-	-
8.	TOTAL-REVENUE CARS	70,630	2,555	3.6
9.	COMPANY SERVICE CARS	1,849	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	971	942	29

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	21	26.5
14.	TOTAL	21	26.5

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

The Chesapeake and Ohio Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B G Lawler
Signature

(301) 237 - 3646
Telephone No. (Include Area Code)

June 16, 1975
Date

ACC-107 (10/74)

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED[a]
(Report dollars and ton-miles in thousands)

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
September 30 1974

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 168,006
2.	REVENUE TON-MILES FOR THIS QUARTER	7,613,475
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)]	.02207
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305	$ 6,803
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4)	174,809
6.	TOTAL REVENUES FROM EX PARTE 305	15,183
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 4,694
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c]	2,579
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)]	7,910
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE	$ 620
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7	186
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF July	$ 1,763
13.	FOR THE MONTH OF August	2,203
14.	FOR THE MONTH OF September	1,648
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER	$ 5,614

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

The Baltimore and Ohio Railroad Company
Note to Schedule A - Revenues Obtained
for the quarter ended September 30, 1974

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD
The Baltimore and Ohio Railway Company

QUARTER ENDING
September 30 — 1974

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS I...	(THOUSANDS OM
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

ACC-107 (10/7.)

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD: The Baltimore and Ohio Railroad Company

QUARTER ENDING: September 30, 1974

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

*1. Costs expressed in terms of wage rates and prices as of*_____

2. Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD: The Baltimore and Ohio Railroad Company

QUARTER ENDING: September 30 1974

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Baltimore and Ohio Railroad Company

QUARTER ENDING
September 30, 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN THOUSANDS	
1.	(201) SUPERINTENDENCE	$ 1,604	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	98	
3.	- WAY SWITCHING TRACKS	38	
4.	- RUNNING TRACKS	1,266	
5.	(212) TIES - YARD SWITCHING TRACKS	156	
6.	- WAY SWITCHING TRACKS	31	
7.	- RUNNING TRACKS	1,055	
8.	(214) RAILS - YARD SWITCHING TRACKS	156	
9.	- WAY SWITCHING TRACKS	(33)	
10.	- RUNNING TRACKS	(1,125)	
11.	(216) OTHER TRACK MATERIAL - YARD SWITCHING TRACKS	220	
12.	- WAY SWITCHING TRACKS	17	
13.	- RUNNING TRACKS	582	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	537	
15.	- WAY SWITCHING TRACKS	125	
16.	- RUNNING TRACKS	4,191	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	43	
19.	- WAY SWITCHING TRACKS	49	
20.	- RUNNING TRACKS	1,638	Nothing
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	1,210	
22.	- WAY SWITCHING TRACKS	227	to
23.	- RUNNING TRACKS	7,607	
24.	(227) STATIONS AND OFFICE BUILDINGS	256	Report
25.	(235) SHOPS AND ENGINEHOUSES	208	
26.	(247) COMMUNICATION SYSTEMS	466	
27.	(249) SIGNALS AND INTERLOCKERS	1,231	
28.	(269) ROADWAY MACHINES	584	
29.	(271) SMALL TOOLS AND SUPPLIES	670	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	526	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	772	
32.	SUB-TOTAL (LINES 24 to 31)	4,713	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	751	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	355	
35.	SUB-TOTAL (LINES 33 and 34)	396	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	15,757	
37.	(266-267) DEPRECIATION AND RETIREMENTS	1,708	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	17,465	
39.	FREIGHT EXPENSE[2]	17,446	
40.	PASSENGER EXPENSE[2]	19	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1,721	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Baltimore and Ohio Railroad Company

QUARTER ENDING
September 30, 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 1,006	$
2.	(302) SHOP MACHINERY	256	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1,502	
4.	-- OTHER	4,159	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	8,374	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	129	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	557	
8.	SUB-TOTAL (LINES 1 to 7)	15,983	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	1,566	Nothing
10.	TOTAL (LINES 8 + 9)	17,549	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR	177	to
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR	69	
13.	SUB-TOTAL (LINES 11 - 12)	108	Report
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	2,813	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	20,470	
16.	FREIGHT EXPENSE[2]	20,447	
17.	PASSENGER EXPENSE[2]	23	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1,822	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Baltimore and Ohio Railroad Co.

QUARTER ENDING: September 30, 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED[2] DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED[2] NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 26	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	80		
3.	(8) TIES	14		
4.	(9) RAILS	205		
5.	(10) OTHER TRACK MATERIAL	44		
6.	(11) BALLAST	197	Nothing	
7.	(12) TRACK LAYING AND SURFACING	74		
8.	(20) SHOPS AND ENGINEHOUSES	5		
9.	(25) TOFC/COFC TERMINALS	53		
10.	(26) COMMUNICATION SYSTEMS	14		
11.	(27) SIGNALS AND INTERLOCKERS	45		
12.	(29) POWER PLANTS	(2)		
13.	(37) ROADWAY MACHINES	150		
14.	(44) SHOP MACHINERY	4		
15.	(45) POWER-PLANT MACHINERY	-	to	
16.	ALL OTHER ROAD	261		
17.	TOTAL - ROAD EXPENDITURES	1,260		
	EQUIPMENT			
18.	(52) LOCOMOTIVES	34		
19.	(53) FREIGHT TRAIN CARS	54		
20.	(55) HIGHWAY REVENUE EQUIPMENT	-	Report	
21.	(57) WORK EQUIPMENT	9		
22.	ALL OTHER EQUIPMENT			
23.	TOTAL - EQUIPMENT EXPENDITURES	137		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	1,134		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 2,531	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in column (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
(Report dollars in thousands, units in whole nos.

NAME OF RAILROAD: B&O

QUARTER ENDING: September 30, 1974

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[2] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 1405	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	178	Nothing
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	34	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	14	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	1300	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	159	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	34	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 2	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	169614	to
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	792496	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	4378	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	68642	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	10229	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	1577	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	306	Report
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	22	
29.	TOTAL (LINES 3 through 28)[3]			

2. *Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

3. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
September 30 1974

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS: NUMBER (b)	HOME CARS UNDERGOING OR AWAITING REPAIRS: PERCENT (c)
1.	BOX CARS	12,227	2,052	16.8
2.	REFRIGERATOR CARS	679	51	7.5
3.	GONDOLAS	9,773	735	7.5
4.	HOPPERS	21,333	548	2.6
5.	COVERED HOPPERS	3,884	333	8.6
6.	FLAT CARS	504	105	17.7
7.	OTHER REVENUE CARS	330	21	6.4
8.	TOTAL-REVENUE CARS	48,820	3,845	7.9
9.	COMPANY SERVICE CARS	1,238	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	987	968	19

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	53	113.5
14.	TOTAL	53	113.5

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

The Baltimore and Ohio Railroad Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B G Lawler
Signature

(301) 237 - 3646
Telephone No. (Include Area Code)

June 16, 1975
Date

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE A - REVENUES OBTAINED[a] *(Report dollars and ton-miles in thousands)*	NAME OF RAILROAD Western Maryland Railway Company QUARTER ENDING September 30 1974

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 18,230
2.	REVENUE TON-MILES FOR THIS QUARTER.....	849,929
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02145 ¢
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 1,121
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	19,351
6.	TOTAL REVENUES FROM EX PARTE 305.....	1,689
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 522
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	560
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	607
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ 69
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	19
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF July	$ 201
13.	FOR THE MONTH OF August	278
14.	FOR THE MONTH OF September	369
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 848

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

Western Maryland Railway Company
Note to Schedule A -- Revenues Obtained
for the quarter ended September 30, 1974

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD: Western Maryland Railway Company

QUARTER ENDING: September 30 — 1974

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN THOUSANDS)	(DOLLARS IN THOUSANDS)
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.

2. Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD: Western Maryland Railway Company

QUARTER ENDING: September 30, 1974

LINE NO.	ITEM	AMOUNT (Thousands)[1] (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

*1. Costs expressed in terms of wage rates and prices as of*_____

2. Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts	NAME OF RAILROAD Western Maryland Railway Company
SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS	QUARTER ENDING September 30 19 74

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts	NAME OF RAILROAD Western Maryland Railway Company
SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES	QUARTER ENDING September 30, 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS IN THOUSANDS	EX PARTE NO. 305 REVENUES APPLIED[1] (b) DOLLARS IN THOUSANDS
1.	(201) SUPERINTENDENCE	$ 143	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	15	
3.	- WAY SWITCHING TRACKS	10	
4.	- RUNNING TRACKS	210	
5.	(212) TIES - YARD SWITCHING TRACKS	6	
6.	- WAY SWITCHING TRACKS	4	
7.	- RUNNING TRACKS	90	
8.	(214) RAILS - YARD SWITCHING TRACKS	(8)	
9.	- WAY SWITCHING TRACKS	(3)	
10.	- RUNNING TRACKS	(95)	
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	(3)	
12.	- WAY SWITCHING TRACKS	(2)	
13.	- RUNNING TRACKS	(37)	Nothing
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	27	to
15.	- WAY SWITCHING TRACKS	19	
16.	- RUNNING TRACKS	383	Report
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	7	
19.	- WAY SWITCHING TRACKS	4	
20.	- RUNNING TRACKS	88	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	44	
22.	- WAY SWITCHING TRACKS	32	
23.	- RUNNING TRACKS	639	
24.	(227) STATIONS AND OFFICE BUILDINGS	26	
25.	(235) SHOPS AND ENGINEHOUSES	16	
26.	(247) COMMUNICATION SYSTEMS	10	
27.	(249) SIGNALS AND INTERLOCKERS	91	
28.	(269) ROADWAY MACHINES	29	
29.	(271) SMALL TOOLS AND SUPPLIES	50	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	57	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	236	
32.	SUB-TOTAL (LINES 24 to 31)	515	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	29	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(1)	
35.	SUB-TOTAL (LINES 33 and 34)	28	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	1 401	
37.	(266-267) DEPRECIATION AND RETIREMENTS	212	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	1 613	
39.	FREIGHT EXPENSE[2]	1 613	
40.	PASSENGER EXPENSE[2]	-	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 162	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
September 30, 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 49	$
2.	(302) SHOP MACHINERY	37	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	107	
4.	-- OTHER	606	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	1 121	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	67	Nothing
8.	SUB-TOTAL (LINES 1 to 7)	1 987	to
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	159	Report
10.	TOTAL (LINES 8 + 9)	2 146	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR.	6	
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR.	(17)	
13.	SUB-TOTAL (LINES 11 - 12)	(11)	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	822	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	2 957	
16.	FREIGHT EXPENSE[2]	2 957	
17.	PASSENGER EXPENSE[2]	-	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 190	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*

2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as annual Report R-1.

ACC-107 (10/74)

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Western Maryland Railway Co.

QUARTER ENDING
September 30 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED[2] DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED[2] NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS			
3.	(8) TIES	3		
4.	(9) RAILS		Nothing	
5.	(10) OTHER TRACK MATERIAL	19		
6.	(11) BALLAST	1		
7.	(12) TRACK LAYING AND SURFACING	7		
8.	(20) SHOPS AND ENGINEHOUSES			
9.	(25) TOFC/COFC TERMINALS			
10.	(26) COMMUNICATION SYSTEMS			
11.	(27) SIGNALS AND INTERLOCKERS			
12.	(29) POWER PLANTS			
13.	(37) ROADWAY MACHINES			
14.	(44) SHOP MACHINERY			
15.	(45) POWER-PLANT MACHINERY		to	
16.	ALL OTHER ROAD	25		
17.	TOTAL - ROAD EXPENDITURES	55		
	EQUIPMENT			
18.	(52) LOCOMOTIVES			
19.	(53) FREIGHT TRAIN CARS	1,140		
20.	(55) HIGHWAY REVENUE EQUIPMENT		Report	
21.	(57) WORK EQUIPMENT			
22.	ALL OTHER EQUIPMENT			
23.	TOTAL - EQUIPMENT EXPENDITURES	1,140		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	(23)		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 1,172	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in column (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

NAME OF RAILROAD
WM

QUARTER ENDING
September 30, 1974

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 EXPENSES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 110	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	6	Nothing
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	1	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	-	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	12	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	1	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	-	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ -	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	11558	to
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	25028	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	117	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	1341	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	254	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	10	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	4	Report
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	-	
29.	TOTAL (LINES 3 through 28)[2]			

1. Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 710, Capital and Other Reserve Funds.

2. Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.

ACC-107 (10/74)

BEST COPY AVAILABLE

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
September 30 1974

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS: NUMBER (b)	HOME CARS UNDERGOING OR AWAITING REPAIRS: PERCENT (c)
1.	BOX CARS	1,162	68	5.9
2.	REFRIGERATOR CARS	50	2	4.0
3.	GONDOLAS	912	122	13.4
4.	HOPPERS	5,191	357	6.9
5.	COVERED HOPPERS	822	17	2.1
6.	FLAT CARS	217	32	14.7
7.	OTHER REVENUE CARS	76	4	5.3
8.	TOTAL-REVENUE CARS	8,430	602	7.1
9.	COMPANY SERVICE CARS	156	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	119	116	3

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	2	1.8
14.	TOTAL	2	1.8

Note: *Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.*

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CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

Western Maryland Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B G Lawler
Signature

(301) 237 - 3646
Telephone No. (Include Area Code)

June 16, 1975
Date

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED[a]
(Report dollars and ton-miles in thousands)

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
December 31 1974

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 138,860
2.	REVENUE TON-MILES FOR THIS QUARTER.....	7,181,637
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.01934 ¢
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 7,259
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	146,119
6.	TOTAL REVENUES FROM EX PARTE 305.....	12,313
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 3,928
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c]	5,615
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	2,770
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -0-
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-0-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF October	$ 1,894
13.	FOR THE MONTH OF November	1,807
14.	FOR THE MONTH OF December	2,828
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 6,529

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

The Chesapeake and Ohio Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended December 31, 1974

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS (EX PARTE NO. 305 REVENUES ONLY)	NAME OF RAILROAD The Chesapeake and Ohio Railway Company QUARTER ENDING December 31 — 1974

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN THOUSANDS)	
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
December 31, 1974

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (a) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

*1. Costs expressed in terms of wage rates and prices as of*_____

2. Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
December 31 1974

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: The Chesapeake and Ohio Railway Co.

QUARTER ENDING: December 31 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN THOUSANDS	
1.	(201) SUPERINTENDENCE	$ 1 313	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	20	
3.	- WAY SWITCHING TRACKS	21	
4.	- RUNNING TRACKS	411	
5.	(212) TIES - YARD SWITCHING TRACKS	89	
6.	- WAY SWITCHING TRACKS	19	
7.	- RUNNING TRACKS	358	
8.	(214) RAILS - YARD SWITCHING TRACKS	21	
9.	- WAY SWITCHING TRACKS	(47)	
10.	- RUNNING TRACKS	(916)	
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	120	
12.	- WAY SWITCHING TRACKS	6	
13.	- RUNNING TRACKS	122	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	96	
15.	- WAY SWITCHING TRACKS	137	
16.	- RUNNING TRACKS	2 678	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	34	Nothing
19.	- WAY SWITCHING TRACKS	30	to
20.	- RUNNING TRACKS	592	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	380	Report
22.	- WAY SWITCHING TRACKS	166	
23.	- RUNNING TRACKS	3 245	
24.	(227) STATIONS AND OFFICE BUILDINGS	166	
25.	(235) SHOPS AND ENGINEHOUSES	291	
26.	(247) COMMUNICATION SYSTEMS	411	
27.	(249) SIGNALS AND INTERLOCKERS	1 109	
28.	(269) ROADWAY MACHINES	443	
29.	(271) SMALL TOOLS AND SUPPLIES	575	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	420	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	3 329	
32.	SUB-TOTAL (LINES 24 to 31)	6 744	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	899	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(318)	
35.	SUB-TOTAL (LINES 33 and 34)	581	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	12 429	
37.	(266-267) DEPRECIATION AND RETIREMENTS	2 741	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	15 170	
39.	FREIGHT EXPENSE[2]	15 165	
40.	PASSENGER EXPENSE[2]	5	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 213	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: The Chesapeake and Ohio Railway Co.

QUARTER ENDING: December 31 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 929	$
2.	(302) SHOP MACHINERY	442	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1 218	
4.	-- OTHER	4 875	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	8 348	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	642	
8.	SUB-TOTAL (LINES 1 to 7)	16 454	Nothing
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	1 917	to
10.	TOTAL (LINES 8 + 9)	18 371	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR	104	Report
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR	(38)	
13.	SUB-TOTAL (LINES 11 - 12)	66	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	6 031	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	24 468	
16.	FREIGHT EXPENSE[2]	24 426	
17.	PASSENGER EXPENSE[2]	42	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 861	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

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INTERSTATE COMMERCE COMMISSION
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SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Chesapeake and Ohio Railway Co.

QUARTER ENDING: December 31 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED[2] DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED[2] NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 282	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	103		
3.	(8) TIES	17	Nothing	
4.	(9) RAILS	312		
5.	(10) OTHER TRACK MATERIAL	238		
6.	(11) BALLAST	30		
7.	(12) TRACK LAYING AND SURFACING	261		
8.	(20) SHOPS AND ENGINEHOUSES	87		
9.	(25) TOFC/COFC TERMINALS	(67)		
10.	(26) COMMUNICATION SYSTEMS	1		
11.	(27) SIGNALS AND INTERLOCKERS	4		
12.	(29) POWER PLANTS	-		
13.	(37) ROADWAY MACHINES	108		
14.	(44) SHOP MACHINERY	12	to	
15.	(45) POWER-PLANT MACHINERY	(1)		
16.	ALL OTHER ROAD	304		
17.	TOTAL - ROAD EXPENDITURES	1,951		
	EQUIPMENT			
18.	(52) LOCOMOTIVES	34		
19.	(53) FREIGHT TRAIN CARS	122		
20.	(55) HIGHWAY REVENUE EQUIPMENT	-	Report	
21.	(57) WORK EQUIPMENT	2		
22.	ALL OTHER EQUIPMENT	185		
23.	TOTAL - EQUIPMENT EXPENDITURES	343		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	84		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 2,378	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

NAME OF RAILROAD: C&O

QUARTER ENDING: December 31, 1974

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[2] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 189	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	58	Nothing
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	34	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	12	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	1381	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	36	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	47	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 60	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	24601	to
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	260131	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	5155	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	54557	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	11058	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	328	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	418	Report
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	541	
29.	TOTAL (LINES 3 through 28)[2]			

1. *Insert in colum (b) that portion of the expenses and units shown in colum (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

NAME OF RAILROAD: The Chesapeake and Ohio Railway Company

QUARTER ENDING: December 31 1974

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS	
			NUMBER (b)	PERCENT (c)
1.	BOX CARS	12,948	1,247	9.6
2.	REFRIGERATOR CARS	1,280	80	6.3
3.	GONDOLAS	6,701	563	8.4
4.	HOPPERS	44,822	441	1.0
5.	COVERED HOPPERS	2,973	219	7.4
6.	FLAT CARS	826	102	12.3
7.	OTHER REVENUE CARS	609	-	-
8.	TOTAL-REVENUE CARS	70,159	2,652	3.8
9.	COMPANY SERVICE CARS	1,615	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	961	934	27

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	1	1.0
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	19	12.9
14.	TOTAL	20	13.9

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

The Chesapeake and Ohio Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B G Lawler
Signature

(301) 237 - 3646
Telephone No. (Include Area Code)

June 16, 1975
Date

ACC-107 (10/74)

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE A - REVENUES OBTAINED[a] *(Report dollars and ton-miles in thousands)*	NAME OF RAILROAD The Baltimore and Ohio Railroad Company QUARTER ENDING December 31 1974

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 155,784
2.	REVENUE TON-MILES FOR THIS QUARTER.....	6,872,339
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02267
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 5,955
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	161,739
6.	TOTAL REVENUES FROM EX PARTE 305.....	13,417
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 4,340
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	2,767
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	6,310
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -0-
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-0-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF October	$ 2,633
13.	FOR THE MONTH OF November	2,464
14.	FOR THE MONTH OF December	2,339
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 7,436

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

The Baltimore and Ohio Railroad Company
Note to Schedule A - Revenues Obtained
for the quarter ended December 31, 1974

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD: The Baltimore and Ohio Railroad Company

QUARTER ENDING: December 31 — 1974

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN THOUSANDS)	
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD: The Baltimore and Ohio Railroad Company

QUARTER ENDING: December 31, 1974

LINE NO.	ITEM	AMOUNT (Thousands)[1] (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. *Costs expressed in terms of wage rates and prices as of* _____

2. *Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.*

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS	NAME OF RAILROAD The Baltimore and Ohio Railroad Company QUARTER ENDING December 31 1974

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES	NAME OF RAILROAD Baltimore and Ohio Railroad Company QUARTER ENDING December 31 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS IN THOUSANDS	EX PARTE NO. 305 REVENUES APPLIED[1] (b) THOUSANDS
1.	(201) SUPERINTENDENCE	$ 1,550	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	68	
3.	- WAY SWITCHING TRACKS	22	
4.	- RUNNING TRACKS	738	
5.	(212) TIES - YARD SWITCHING TRACKS	134	
6.	- WAY SWITCHING TRACKS	38	
7.	- RUNNING TRACKS	1,279	
8.	(214) RAILS - YARD SWITCHING TRACKS	93	
9.	- WAY SWITCHING TRACKS	1	
10.	- RUNNING TRACKS	50	
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	183	
12.	- WAY SWITCHING TRACKS	12	
13.	- RUNNING TRACKS	413	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	436	
15.	- WAY SWITCHING TRACKS	99	
16.	- RUNNING TRACKS	3,334	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	30	
19.	- WAY SWITCHING TRACKS	48	Nothing
20.	- RUNNING TRACKS	1,600	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	964	to
22.	- WAY SWITCHING TRACKS	220	
23.	- RUNNING TRACKS	7,416	Report
24.	(227) STATIONS AND OFFICE BUILDINGS	199	
25.	(235) SHOPS AND ENGINEHOUSES	218	
26.	(247) COMMUNICATION SYSTEMS	536	
27.	(249) SIGNALS AND INTERLOCKERS	1,704	
28.	(269) ROADWAY MACHINES	540	
29.	(271) SMALL TOOLS AND SUPPLIES	722	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	525	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	1,358	
32.	SUB-TOTAL (LINES 24 to 31)	5,802	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	826	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	327	
35.	SUB-TOTAL (LINES 33 and 34)	499	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	16,449	
37.	(266-267) DEPRECIATION AND RETIREMENTS	2,630	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	19,079	
39.	FREIGHT EXPENSE[2]	19,058	
40.	PASSENGER EXPENSE[2]	21	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1,530	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Baltimore and Ohio Railroad Company

QUARTER ENDING: December 31 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 993	$
2.	(302) SHOP MACHINERY	261	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1,595	
4.	-- OTHER	4,308	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	8,773	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	110	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	561	
8.	SUB-TOTAL (LINES 1 to 7)	16,601	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	1,910	Nothing
10.	TOTAL (LINES 8 + 9)	18,511	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR.	239	to
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR.	60	
13.	SUB-TOTAL (LINES 11 - 12)	179	Report
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	2,795	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	21,485	
16.	FREIGHT EXPENSE[2]	21,311	
17.	PASSENGER EXPENSE[2]	174	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1,634	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*

2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Baltimore and Ohio Railroad Co.

QUARTER ENDING: December 31 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED[2] DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED[2] NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 65	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	302		
3.	(8) TIES	25		
4.	(9) RAILS	124		
5.	(10) OTHER TRACK MATERIAL	246	Nothing	
6.	(11) BALLAST	31		
7.	(12) TRACK LAYING AND SURFACING	161		
8.	(20) SHOPS AND ENGINEHOUSES	91		
9.	(25) TOFC/COFC TERMINALS	171		
10.	(26) COMMUNICATION SYSTEMS	129		
11.	(27) SIGNALS AND INTERLOCKERS	(388)		
12.	(29) POWER PLANTS	3		
13.	(37) ROADWAY MACHINES	378		
14.	(44) SHOP MACHINERY	5	to	
15.	(45) POWER-PLANT MACHINERY	-		
16.	ALL OTHER ROAD	204		
17.	TOTAL - ROAD EXPENDITURES	1,927		
	EQUIPMENT			
18.	(52) LOCOMOTIVES	58		
19.	(53) FREIGHT TRAIN CARS	38		
20.	(55) HIGHWAY REVENUE EQUIPMENT	-	Report	
21.	(57) WORK EQUIPMENT	88		
22.	ALL OTHER EQUIPMENT	4		
23.	TOTAL - EQUIPMENT EXPENDITURES	188		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	197		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 2,312	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in column (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

NAME OF RAILROAD
B&O

QUARTER ENDING
December 31, 1974

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 418	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	53	Nothing
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	10	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	4	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	2404	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	265	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	63	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 4	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			to
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	50426	
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	235607	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	1302	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	20407	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	18024	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	2017	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	565	Report
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	41	
29.	TOTAL (LINES 3 through 28)[2]			

1. Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.

2. Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
December 31, 1974

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS: NUMBER (b)	HOME CARS UNDERGOING OR AWAITING REPAIRS: PERCENT (c)
1.	BOX CARS	12,019	2,126	17.7
2.	REFRIGERATOR CARS	678	63	9.3
3.	GONDOLAS	9,755	792	8.1
4.	HOPPERS	21,094	483	2.3
5.	COVERED HOPPERS	3,876	357	9.2
6.	FLAT CARS	593	95	16.0
7.	OTHER REVENUE CARS	330	23	7.0
8.	TOTAL-REVENUE CARS	48,345	3,939	8.1
9.	COMPANY SERVICE CARS	1,230	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	974	954	20

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	71	113.1
14.	TOTAL	71	113.1

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

The Baltimore and Ohio Railroad Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B G Lawler
Signature

(301) 237 - 3646
Telephone No. (Include Area Code)

June 16, 1975
Date

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED[a]
(Report dollars and ton-miles in thousands).

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
December 31 1974

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 18,755
2.	REVENUE TON-MILES FOR THIS QUARTER.....	761,637
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02462
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 1,283
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	20,038
6.	TOTAL REVENUES FROM EX PARTE 305.....	1,681
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 539
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	548
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	594
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -0-
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-0-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF October	$ 293
13.	FOR THE MONTH OF November	430
14.	FOR THE MONTH OF December	200
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 923

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

Western Maryland Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended December 31, 1974

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS (EX PARTE NO. 305 REVENUES ONLY)	NAME OF RAILROAD Western Maryland Railway Company QUARTER ENDING December 31 — 1974

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
			(DOLLARS IN THOUSANDS)
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD: Western Maryland Railway Company

QUARTER ENDING: December 31, 1974

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. Costs expressed in terms of wage rates and prices as of _____

2. Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD: Western Maryland Railway Company

QUARTER ENDING: December 31 1974

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
December 31 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS IN	EX PARTE NO. 305 REVENUES APPLIED[1] (b) THOUSANDS
1.	(201) SUPERINTENDENCE	$ 131	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	(1)	
3.	- WAY SWITCHING TRACKS	-	
4.	- RUNNING TRACKS	(10)	
5.	(212) TIES - YARD SWITCHING TRACKS	10	
6.	- WAY SWITCHING TRACKS	7	
7.	- RUNNING TRACKS	135	
8.	(214) RAILS - YARD SWITCHING TRACKS	-	
9.	- WAY SWITCHING TRACKS	-	
10.	- RUNNING TRACKS	(4)	
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	4	
12.	- WAY SWITCHING TRACKS	2	Nothing
13.	- RUNNING TRACKS	48	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	21	to
15.	- WAY SWITCHING TRACKS	15	
16.	- RUNNING TRACKS	308	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	7	Report
19.	- WAY SWITCHING TRACKS	5	
20.	- RUNNING TRACKS	92	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	41	
22.	- WAY SWITCHING TRACKS	29	
23.	- RUNNING TRACKS	569	
24.	(227) STATIONS AND OFFICE BUILDINGS	30	
25.	(235) SHOPS AND ENGINEHOUSES	16	
26.	(247) COMMUNICATION SYSTEMS	43	
27.	(249) SIGNALS AND INTERLOCKERS	93	
28.	(269) ROADWAY MACHINES	41	
29.	(271) SMALL TOOLS AND SUPPLIES	52	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	58	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	365	
32.	SUB-TOTAL (LINES 24 to 31)	698	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	33	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	-	
35.	SUB-TOTAL (LINES 33 and 34)	33	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	1 501	
37.	(266-267) DEPRECIATION AND RETIREMENTS	197	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	1 698	
39.	FREIGHT EXPENSE[2]	1 698	
40.	PASSENGER EXPENSE[2]	-	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 148	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
December 31, 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS IN	EX PARTE NO. 305 REVENUES APPLIED[1] (b) THOUSANDS
1.	(301) SUPERINTENDENCE	$ 46	$
2.	(302) SHOP MACHINERY	25	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	109	
4.	-- OTHER	622	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	1 208	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	69	Nothing
8.	SUB-TOTAL (LINES 1 to 7)	2 079	to
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	129	Report
10.	TOTAL (LINES 8 + 9)	2 208	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR	6	
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR	(16)	
13.	SUB-TOTAL (LINES 11 - 12)	(10)	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	820	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	3 018	
16.	FREIGHT EXPENSE[2]	3 018	
17.	PASSENGER EXPENSE[2]	-	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 176	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Western Maryland Railway

QUARTER ENDING: December 31, 1974

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED[2]: DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED[2]: NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ (40)	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS		Nothing	
3.	(8) TIES	3		
4.	(9) RAILS	1		
5.	(10) OTHER TRACK MATERIAL			
6.	(11) BALLAST	8		
7.	(12) TRACK LAYING AND SURFACING			
8.	(20) SHOPS AND ENGINEHOUSES			
9.	(25) TOFC/COFC TERMINALS			
10.	(26) COMMUNICATION SYSTEMS			
11.	(27) SIGNALS AND INTERLOCKERS			
12.	(29) POWER PLANTS			
13.	(37) ROADWAY MACHINES			
14.	(44) SHOP MACHINERY			
15.	(45) POWER-PLANT MACHINERY		to	
16.	ALL OTHER ROAD			
17.	TOTAL - ROAD EXPENDITURES	(28)		
	EQUIPMENT			
18.	(52) LOCOMOTIVES			
19.	(53) FREIGHT TRAIN CARS			
20.	(55) HIGHWAY REVENUE EQUIPMENT		Report	
21.	(57) WORK EQUIPMENT			
22.	ALL OTHER EQUIPMENT			
23.	TOTAL - EQUIPMENT EXPENDITURES			
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	18		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ (10)	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

NAME OF RAILROAD: WM

QUARTER ENDING: December 31, 1974

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[2] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 33	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	2	Nothing
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	-	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	-	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	21	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	3	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	1	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ -	$
			(WHOLE NUMBERS)	
15.	TOTAL TIES LAID			
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	3436	30
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	7408	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	35	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	500	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	470	Report
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	10	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	8	
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	-	
29.	TOTAL (LINES 3 through 28)[3]			

1. *Insert in colum (b) that portion of the expenses and units shown in colum (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
December 31 1974

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS	
			NUMBER (b)	PERCENT (c)
1.	BOX CARS	1,138	67	5.9
2.	REFRIGERATOR CARS	50	1	2.0
3.	GONDOLAS	885	144	16.3
4.	HOPPERS	5,182	264	5.1
5.	COVERED HOPPERS	821	21	2.6
6.	FLAT CARS	217	37	17.1
7.	OTHER REVENUE CARS	76	3	3.9
8.	TOTAL-REVENUE CARS	8,369	537	6.4
9.	COMPANY SERVICE CARS	153	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	119	118	1

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	4	9.4
14.	TOTAL	4	9.4

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

Western Maryland Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B. G. Lawler
Signature

(301) 237 - 3646
Telephone No. (Include Area Code)

June 16, 1975
Date

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED[a]
(Report dollars and ton-miles in thousands)

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
March 31 1975

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 127,694
2.	REVENUE TON-MILES FOR THIS QUARTER.....	6,747,336
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.01893 ¢
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 7,090
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	134,784
6.	TOTAL REVENUES FROM EX PARTE 305.....	11,335
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 3,608
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	5,681
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	2,046
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -0-
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-0-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF January	$ 2,505
13.	FOR THE MONTH OF February	2,517
14.	FOR THE MONTH OF March	2,219
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 7,241

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

The Chesapeake and Ohio Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended March 31, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD: The Chesapeake and Ohio Railway Company

QUARTER ENDING: March 31 1975

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN THOUSANDS)	
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CUPRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau f Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD: The Chesapeake and Ohio Railway Compan

QUARTER ENDING: March 31 1975

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. *Costs expressed in terms of wage rates and prices as of*_____

2. *Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.*

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD: The Chesapeake and Ohio Railway Company

QUARTER ENDING: March 31 1975

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE E-TOTAL EXPENDITURES OF MOF EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: The Chesapeake & Ohio Railway Company

QUARTER ENDING: March 31 19[illegible]

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS IN THOUSANDS	EX PARTE NO. 305 REVENUES APPLIED[1] (b) DOLLARS IN THOUSANDS
1.	(201) SUPERINTENDENCE	$ 1 058	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	25	
3.	- WAY SWITCHING TRACKS	61	Nothing
4.	- RUNNING TRACKS	1 192	
5.	(212) TIES - YARD SWITCHING TRACKS	23	
6.	- WAY SWITCHING TRACKS	7	
7.	- RUNNING TRACKS	143	
8.	(214) RAILS - YARD SWITCHING TRACKS	60	
9.	- WAY SWITCHING TRACKS	17	
10.	- RUNNING TRACKS	327	to
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	93	
12.	- WAY SWITCHING TRACKS	16	
13.	- RUNNING TRACKS	312	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	229	
15.	- WAY SWITCHING TRACKS	127	
16.	- RUNNING TRACKS	2 481	
17.	(205, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	20	
19.	- WAY SWITCHING TRACKS	23	
20.	- RUNNING TRACKS	446	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	450	
22.	- WAY SWITCHING TRACKS	251	Report
23.	- RUNNING TRACKS	4 901	
24.	(227) STATIONS AND OFFICE BUILDINGS	260	
25.	(235) SHOPS AND ENGINEHOUSES	380	
26.	(247) COMMUNICATION SYSTEMS	506	
27.	(249) SIGNALS AND INTERLOCKERS	1 159	
28.	(269) ROADWAY MACHINES	558	
29.	(271) SMALL TOOLS AND SUPPLIES	668	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	425	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	1 638	
32.	SUB-TOTAL (LINES 24 to 31)	5 594	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	935	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(287)	
35.	SUB-TOTAL (LINES 33 and 34)	648	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	12 902	
37.	(266-267) DEPRECIATION AND RETIREMENTS	1 424	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	14 326	
39.	FREIGHT EXPENSE[2]	14 322	
40.	PASSENGER EXPENSE[2]	4	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 280	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1 for 1974.

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BEST COPY AVAILABLE

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
The Chesapeake & Ohio Railway Company

SCHEDULE F-TOTAL EXPENDITURE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
March 31 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
		DOLLARS IN THOUSANDS	
1.	(501) SUPERINTENDENCE	$ 959	$
2.	(502) SHOP MACHINERY	645	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1 408	
4.	-- OTHER	5 426	Nothing
5.	(314) FREIGHT TRAIN CARS - REPAIRS	9 301	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	651	
8.	SUB-TOTAL (LINES 1 to 7)	18 390	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	1 707	
10.	TOTAL (LINES 8 + 9)	20 097	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR	99	to
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR	(27)	
13.	SUB-TOTAL (LINES 11 - 12)	72	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	6 176	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	26 345	
16.	FREIGHT EXPENSE[2]	26 300	Report
17.	PASSENGER EXPENSE[2]	45	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 957	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*

2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1 for 1974.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Chesapeake and Ohio Railway Company

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
March 31 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED: DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED: NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 223	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	(9)		
3.	(8) TIES	(35)		
4.	(9) RAILS	195	Nothing	
5.	(10) OTHER TRACK MATERIAL	75		
6.	(11) BALLAST	83		
7.	(12) TRACK LAYING AND SURFACING	(22)		
8.	(20) SHOPS AND ENGINEHOUSES	5		
9.	(25) TOFC/COFC TERMINALS	155		
10.	(26) COMMUNICATION SYSTEMS	(1)		
11.	(27) SIGNALS AND INTERLOCKERS	94		
12.	(29) POWER PLANTS			
13.	(37) ROADWAY MACHINES	38	to	
14.	(44) SHOP MACHINERY	35		
15.	(45) POWER-PLANT MACHINERY	1		
16.	ALL OTHER ROAD	20		
17.	TOTAL - ROAD EXPENDITURES	780		
	EQUIPMENT			
18.	(52) LOCOMOTIVES	3,172		
19.	(53) FREIGHT TRAIN CARS	4,731		
20.	(55) HIGHWAY REVENUE EQUIPMENT			
21.	(57) WORK EQUIPMENT	43	Report	
22.	ALL OTHER EQUIPMENT	288		
23.	TOTAL - EQUIPMENT EXPENDITURES	8,234		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	1,267		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 10,281	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in column (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
March 31, 1975

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID

Report dollars in thousands, units in whole nos.

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES.....	SCH. 513, COL. (d)	$ 97	$
4.	SWITCH AND BRIDGE TIES.....	SCH. 513, COL. (g)	14	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES.....	SCH. 514, COL. (d)	26	
7.	SWITCH AND BRIDGE TIES.....	SCH. 514, Col. (g)	9	
8.	TOTAL COST OF RAILS LAID			Nothing
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.....	SCH. 515, Col. (d)	1,110	
11.	YARD TRACKS, ETC.....	SCH. 515, Col. (h)	45	to
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.....	SCH. 516, COL. (d)	17	Report
14.	YARD TRACKS, ETC.....	SCH. 516, COL. (h)	$ 22	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER).....	SCH. 513, COL. (b)	9,618	
18.	SW. AND BR. TIES (BD. FT.).....	SCH. 513, COL. (e)	52,259	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER).....	SCH. 514, COL. (b)	3,965	
21.	SW. AND BR. TIES (BD. FT.).....	SCH. 514, COL. (e)	41,967	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS).....	SCH. 515, COL. (c)	5,148	
25.	YARD TRACKS, ETC. (TONS).....	SCH. 515, COL. (g)	303	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS).....	SCH. 516, COL. (c)	155	
28.	YARD TRACKS, ETC. (TONS).....	SCH. 516, COL. (g)	200	
29.	TOTAL (LINES 3 through 28)[2]....		114,955	

1. *Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

SCHEDULE 1 - EQUIPMENT DATA AND SLOW ORDER TRACK

QUARTER ENDING
March 31, 1975

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS	
			NUMBER (b)	PERCENT (c)
1.	BOX CARS.....	12,814	1,438	11.1
2.	REFRIGERATOR CARS.....	1,276	82	6.3
3.	GONDOLAS.....	6,702	633	9.4
4.	HOPPERS.....	10,263	153	1.5
5.	COVERED HOPPERS.....	2,967	228	7.7
6.	FLAT CARS.....	1,469	101	7.2
7.	OTHER REVENUE CARS.....	-	-	-
8.	TOTAL-REVENUE CARS.....	69,906	2,934	4.2
9.	COMPANY SERVICE CARS.....	1,816	100	5.5

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS.....	977	949	28

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS.....	1	1.0
12.	WAY SWITCHING TRACKS.....	1	1.0
13.	RUNNING TRACKS.....	74	96.5
14.	TOTAL.....	76	98.5

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

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CERTIFICATION

I, the undersigned R. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

The Chesapeake and Ohio Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

Signature

301 237-3646
Telephone No. (Include Area Code)

May 14, 1975
Date

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED
(Report dollars and ton-miles in thousands)

NAME OF RAILROAD
The Baltimore and Ohio Railroad System

QUARTER ENDING
March 31, 1975

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 140,477
2.	REVENUE TON-MILES FOR THIS QUARTER.....	6,227,855
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02256
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 5,011
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	145,488
6.	TOTAL REVENUES FROM EX PARTE 305.....	12,131
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 3,913
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	1,972
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	6,246
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -0-
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-0-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF January	$ 2,745
13.	FOR THE MONTH OF February	2,757
14.	FOR THE MONTH OF March	2,404
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 7,906

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

The Baltimore and Ohio Railroad Company
Note to Schedule A - Revenues Obtained
for the quarter ended March 31, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS (EX PARTE NO. 305 REVENUES ONLY)	NAME OF RAILROAD The Baltimore and Ohio Railroad Compa QUARTER ENDING March 31 - 1975

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN	THOUSANDS)
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.

2. Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.

Respondent has nothing to report on this schedule.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD: The Baltimore and Ohio Railroad Company

QUARTER ENDING: March 31 1975

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

*1. Costs expressed in terms of wage rates and prices as of*_____

2. Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD: The Baltimore and Ohio Railroad Company

QUARTER ENDING: March 31 1975

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Baltimore and Ohio Railroad Company

QUARTER ENDING: March 31 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
		DOLLARS IN THOUSANDS	
1.	(201) SUPERINTENDENCE	$ 1,823	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	49	
3.	- WAY SWITCHING TRACKS	50	Nothing
4.	- RUNNING TRACKS	1,681	
5.	(212) TIES - YARD SWITCHING TRACKS	62	
6.	- WAY SWITCHING TRACKS	16	
7.	- RUNNING TRACKS	528	
8.	(214) RAILS - YARD SWITCHING TRACKS	252	
9.	- WAY SWITCHING TRACKS	(71)	
10.	- RUNNING TRACKS	(233)	
11.	(216) OTHER TRACK MATERIAL - YARD SWITCHING TRACKS	146	
12.	- WAY SWITCHING TRACKS	9	
13.	- RUNNING TRACKS	319	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	472	
15.	- WAY SWITCHING TRACKS	98	
16.	- RUNNING TRACKS	3,307	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	53	
19.	- WAY SWITCHING TRACKS	27	to
20.	- RUNNING TRACKS	955	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	1,035	
22.	- WAY SWITCHING TRACKS	195	
23.	- RUNNING TRACKS	6,561	
24.	(227) STATIONS AND OFFICE BUILDINGS	492	
25.	(235) SHOPS AND ENGINEHOUSES	217	
26.	(247) COMMUNICATION SYSTEMS	504	
27.	(249) SIGNALS AND INTERLOCKERS	1,401	
28.	(269) ROADWAY MACHINES	712	
29.	(271) SMALL TOOLS AND SUPPLIES	830	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	491	Report
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	1,464	
32.	SUB-TOTAL (LINES 24 to 31)	6,111	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	754	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(317)	
35.	SUB-TOTAL (LINES 33 and 34)	437	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	16,164	
37.	(266-267) DEPRECIATION AND RETIREMENTS	1,583	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	17,747	
39.	FREIGHT EXPENSE[2]	17,727	
40.	PASSENGER EXPENSE[2]	20	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1,467	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1 for 1974.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Baltimore and Ohio Railroad Company

QUARTER ENDING: March 31 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
		DOLLARS IN	THOUSANDS
1.	(301) SUPERINTENDENCE	$ 1,071	$
2.	(302) SHOP MACHINERY	303	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1,840	
4.	-- OTHER	5,191	Nothing
5.	(314) FREIGHT TRAIN CARS - REPAIRS	10,094	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	146	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	540	
8.	SUB-TOTAL (LINES 1 to 7)	19,185	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	1,443	
10.	TOTAL (LINES 8 + 9)	20,628	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR	202	
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR	(56)	to
13.	SUB-TOTAL (LINES 11 - 12)	146	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	2,774	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	23,548	
16.	FREIGHT EXPENSE[2]	23,357	
17.	PASSENGER EXPENSE[2]	191	Report
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1,614	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1 for 1974.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Baltimore and Ohio Railroad Company

QUARTER ENDING
March 31 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED[2] DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED[2] NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 10	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	2		
3.	(8) TIES	30		
4.	(9) RAILS	50		
5.	(10) OTHER TRACK MATERIAL	293		
6.	(11) BALLAST	111	Nothing	
7.	(12) TRACK LAYING AND SURFACING	185		
8.	(20) SHOPS AND ENGINEHOUSES	19		
9.	(25) TOFC/COFC TERMINALS	42		
10.	(26) COMMUNICATION SYSTEMS	128		
11.	(27) SIGNALS AND INTERLOCKERS	19		
12.	(29) POWER PLANTS			
13.	(37) ROADWAY MACHINES	261		
14.	(44) SHOP MACHINERY	2		
15.	(45) POWER-PLANT MACHINERY			
16.	ALL OTHER ROAD	350		
17.	TOTAL - ROAD EXPENDITURES	1,437		
	EQUIPMENT		to	
18.	(52) LOCOMOTIVES			
19.	(53) FREIGHT TRAIN CARS	1,041		
20.	(55) HIGHWAY REVENUE EQUIPMENT	109		
21.	(57) WORK EQUIPMENT	45		
22.	ALL OTHER EQUIPMENT	207		
23.	TOTAL - EQUIPMENT EXPENDITURES	1,402		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	1,771	Report	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 4,610	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, write in whole nos.

NAME OF RAILROAD
The Baltimore & Ohio Railroad Company

QUARTER ENDING
March 31 1975

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 153	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	26	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	9	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	4	
8.	TOTAL COST OF RAILS LAID			Nothing
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	831	to
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	80	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	17	Report
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 1	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	15,179	
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	93,272	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	1,183	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	18,552	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	4,662	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	788	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	153	
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	11	
29.	TOTAL (LINES 3 through 28)[2]		134,921	

1. *Insert in colum (b) that portion of the expenses and units shown in colum (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
The Baltimore and Ohio Railroad Co.

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

QUARTER ENDING
March 31, 197

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS	
			NUMBER (b)	PERCENT (c)
1.	BOX CARS	11,016	2,537	21.3
2.	REFRIGERATOR CARS	678	72	10.6
3.	GONDOLAS	9,738	833	8.6
4.	HOPPERS	20,917	662	3.2
5.	COVERED HOPPERS	3,875	462	11.9
6.	FLAT CARS	588	118	20.1
7.	OTHER REVENUE CARS	329	25	7.6
8.	TOTAL-REVENUE CARS	48,041	4,709	9.8
9.	COMPANY SERVICE CARS	1,251	13	1.0

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	970	956	14

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	0	0
12.	WAY SWITCHING TRACKS	0	0
13.	RUNNING TRACKS	101	124.3
14.	TOTAL	101	124.3

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

CERTIFICATION

I, the undersigned R. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

The Baltimore and Ohio Railroad Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

Signature

301 237-3646
Telephone No. (Include Area Code)

May 14, 197 5
Date

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland Railway Company

SCHEDULE A - REVENUES OBTAINED[a]
(Report dollars and ton-miles in thousands)

QUARTER ENDING
March 31, 1975

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 18,454
2.	REVENUE TON-MILES FOR THIS QUARTER.....	724,205
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02548
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 1,560
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	20,014
6.	TOTAL REVENUES FROM EX PARTE 305.....	1,655
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 531
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	540
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	584
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -0-
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-0-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF January	$ 320
13.	FOR THE MONTH OF February	407
14.	FOR THE MONTH OF March	270
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 997

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 100.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

Western Maryland Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended March 31, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD: Western Maryland Railway Company

QUARTER ENDING: March 31 19[illegible]

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN THOUSANDS)	
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.

2. Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD: Western Maryland Railway Company

QUARTER ENDING: March 31 19[illegible]

LINE NO.	ITEM	AMOUNT (Thousands)[1] (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

*1. Costs expressed in terms of wage rates and prices as of*_____

2. Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

Western Maryland Railway Company

QUARTER ENDING March 31 19 75

LINE NO.	ACCOUNT	AMOUNT (Thousands of dollars)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(23) TURNTABLES AND TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(31) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

Western Maryland Railway Company

QUARTER ENDING March 31 19 75

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS	EX PARTE NO. 339 REVENUES APPLIED (b) DOLLARS
1.	(201) SUPERINTENDENCE	180	
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	5	
3.	- WAY SWITCHING TRACKS	11	
4.	- RUNNING TRACKS	224	
5.	(212) TIES - YARD SWITCHING TRACKS	3	Nothing
6.	- WAY SWITCHING TRACKS	3	
7.	- RUNNING TRACKS	59	
8.	(214) RAILS - YARD SWITCHING TRACKS	-	
9.	- WAY SWITCHING TRACKS	1	
10.	- RUNNING TRACKS	11	
11.	(216) OTHER TRACK MATERIAL - YARD SWITCHING TRACKS	2	
12.	- WAY SWITCHING TRACKS	2	
13.	- RUNNING TRACKS	28	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	26	
15.	- WAY SWITCHING TRACKS	23	
16.	- RUNNING TRACKS	473	
17.	(205, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	-	
19.	- WAY SWITCHING TRACKS	5	
20.	- RUNNING TRACKS	96	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	36	
22.	- WAY SWITCHING TRACKS	45	to
23.	- RUNNING TRACKS	891	
24.	(227) STATIONS AND OFFICE BUILDINGS	42	
25.	(235) SHOPS AND ENGINEHOUSES	38	
26.	(247) COMMUNICATION SYSTEMS	69	
27.	(249) SIGNALS AND INTERLOCKERS	137	
28.	(269) ROADWAY MACHINES	57	
29.	(271) SMALL TOOLS AND SUPPLIES	78	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	55	
31.	(227-282, EXCLUDING ABOVE AND 265, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	245	
32.	SUB-TOTAL (LINES 24 to 31)	721	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	30	Report
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(1)	
35.	SUB-TOTAL (LINES 33 and 34)	29	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	1 902	
37.	(266-267) DEPRECIATION AND RETIREMENTS	196	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	2 098	
39.	FREIGHT EXPENSE[2]	2 098	
40.	PASSENGER EXPENSE[2]	-	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	172	

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 306 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1 for 1974.

ACC-107 (10/74)

BEST COPY AVAILABLE

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland Railway Company

SCHEDULE 6 - TOTAL EXPENDITURES OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
March 31 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 58	$
2.	(302) SHOP MACHINERY	46	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	106	
4.	-- OTHER	447	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	1 087	Nothing
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	64	
8.	SUB-TOTAL (LINES 1 to 7)	1 808	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	290	
10.	TOTAL (LINES 8 + 9)	2 098	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR.	5	to
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR.	(17)	
13.	SUB-TOTAL (LINES 11 - 12)	(12)	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	812	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	2 898	
16.	FREIGHT EXPENSE[2]	2 898	
17.	PASSENGER EXPENSE[2]	-	Report
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 199	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*

2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1 for 1974.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland Railway Company

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
March 31 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	XP-305 REVENUES APPLIED[2] DELAYED PROGRAMS (b)	XP-305 REVENUES APPLIED[2] NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ (1)	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS			
3.	(8) TIES	(3)		
4.	(9) RAILS	(1)		
5.	(10) OTHER TRACK MATERIAL	(2)		
6.	(11) BALLAST	(1)	Nothing	
7.	(12) TRACK LAYING AND SURFACING	(3)		
8.	(20) SHOPS AND ENGINEHOUSES			
9.	(25) TOFC/COFC TERMINALS	42		
10.	(26) COMMUNICATION SYSTEMS	1		
11.	(27) SIGNALS AND INTERLOCKERS			
12.	(29) POWER PLANTS			
13.	(37) ROADWAY MACHINES			
14.	(44) SHOP MACHINERY			
15.	(45) POWER-PLANT MACHINERY			
16.	ALL OTHER ROAD	21		
17.	TOTAL - ROAD EXPENDITURES	54		
	EQUIPMENT			to
18.	(52) LOCOMOTIVES			
19.	(53) FREIGHT TRAIN CARS			
20.	(55) HIGHWAY REVENUE EQUIPMENT			
21.	(57) WORK EQUIPMENT			
22.	ALL OTHER EQUIPMENT	56		
23.	TOTAL - EQUIPMENT EXPENDITURES	56		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	(64)	Report	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 44	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland Railway Company

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole numbers

QUARTER ENDING
March 31, 1975

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 31	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	4	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)		
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)		
8.	TOTAL COST OF RAILS LAID			Nothing
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)		to
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)		
12.	IN ADDITIONAL TRACKS:			Report
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)		
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	3,108	
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	15,923	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)		
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)		
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)		
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)		
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)		
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)		
29.	TOTAL (LINES 3 through 28)[2]		19,066	

1. *Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland Railway Company

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER DATA

QUARTER ENDING
March 31, 1975

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS	
			NUMBER (b)	PERCENT (c)
1.	BOX CARS	1,122	125	11.0
2.	REFRIGERATOR CARS	50	1	2.0
3.	CONDOLAS	860	190	22.0
4.	HOPPERS	5,170	257	5.0
5.	COVERED HOPPERS	881	25	3.0
6.	FLAT CARS	217	45	21.2
7.	OTHER REVENUE CARS	76	9	11.8
8.	TOTAL-REVENUE CARS	8,344	662	7.9
9.	COMPANY SERVICE CARS	152	-	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	119	118	1

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	0	0
12.	WAY SWITCHING TRACKS	0	0
13.	RUNNING TRACKS	10	114.9
14.	TOTAL	10	114.9

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

CERTIFICATION

I, the undersigned B. G. Lawlor, Asst. Vice President & Controller of
(Print or type name and title)

Western Maryland Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

Signature — 301 237 - 3646 *Telephone No. (Include Area Code)*

May 14, 1975
Date

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED[a]
(Report dollars and ton-miles in thousands)

NAME OF RAILROAD
The Chesapeake and Ohio Railway (West)

QUARTER ENDING
June 30, 1975

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 243,017
2.	REVENUE TON-MILES FOR THIS QUARTER.....	7,535,7[illegible]
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.03203
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ [illegible]
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	250,093
6.	TOTAL REVENUES FROM EX PARTE 305.....	12,173
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 3,860
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	6,100
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	2,20[illegible]
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF April	$ 3,175
13.	FOR THE MONTH OF May	3,[illegible]
14.	FOR THE MONTH OF June	3,[illegible]
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 9,01[illegible]

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

The Chesapeake and Ohio Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended June 30, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
June 30, 197

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS [illegible]	[illegible]
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

ACC-137

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

QUARTER ENDING
June 30, 197

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. *Costs expressed in terms of wage rates and prices as of*_____

2. *Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.*

... Respondent has nothing to report on this schedule. ...

ACC-107 (10/74)

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

QUARTER ENDING
June 30, 197

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	

... Respondent has nothing to report on this schedule. ...

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
THE CHESAPEAKE AND OHIO RAILWAY CO.

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
June 30 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
1.	(201) SUPERINTENDENCE	$ 1 049	
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	44	
3.	- WAY SWITCHING TRACKS	77	
4.	- RUNNING TRACKS	1 503	
5.	(212) TIES - YARD SWITCHING TRACKS	60	
6.	- WAY SWITCHING TRACKS	79	
7.	- RUNNING TRACKS	1 545	
8.	(214) RAILS - YARD SWITCHING TRACKS	20	
9.	- WAY SWITCHING TRACKS	42	
10.	- RUNNING TRACKS	821	
11.	(216) OTHER TRACK MATERIAL - YARD SWITCHING TRACKS	52	
12.	- WAY SWITCHING TRACKS	2	
13.	- RUNNING TRACKS	931	NOTHING
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	217	
15.	- WAY SWITCHING TRACKS	201	
16.	- RUNNING TRACKS	3 934	20
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS - YARD SWITCHING TRACKS	41	
18.	- WAY SWITCHING TRACKS	67	
19.	- RUNNING TRACKS	1 311	
20.			
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	434	REPORT
22.	- WAY SWITCHING TRACKS	503	
23.	- RUNNING TRACKS	9 936	
24.	(227) STATIONS AND OFFICE BUILDINGS	317	
25.	(235) SHOPS AND ENGINEHOUSES	327	
26.	(247) COMMUNICATION SYSTEMS	550	
27.	(249) SIGNALS AND INTERLOCKERS	1 438	
28.	(269) ROADWAY MACHINES	574	
29.	(271) SMALL TOOLS AND SUPPLIES	714	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	433	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	1 895	
32.	SUB-TOTAL (LINES 24 to 31)	6 240	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	1 [illegible]	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(293)	
35.	SUB-TOTAL (LINES 33 and 34)	712	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	18 803	
37.	(266-267) DEPRECIATION AND RETIREMENTS	1 415	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	20 308	
39.	FREIGHT EXPENSE[2]	20 302	
40.	PASSENGER EXPENSE[2]	6	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 324	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
THE CHESAPEAKE AND OHIO RAILWAY CO.

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
June 30, 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
		DOLLARS IN	
1.	(301) SUPERINTENDENCE	$ 985	$
2.	(302) SHOP MACHINERY	740	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1 565	NOTHING
4.	-- OTHER	6 066	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	8 109	70
6.	(317) PASSENGER TRAIN CARS - REPAIRS	(1)	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	681	REPORT
8.	SUB-TOTAL (LINES 1 to 7)	18 145	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	2 025	
10.	TOTAL (LINES 8 + 9)	20 170	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR	115	
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR	(25)	
13.	SUB-TOTAL (LINES 11 - 12)	90	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	6 268	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	26 528	
16.	FREIGHT EXPENSE[2]	26 520	
17.	PASSENGER EXPENSE[2]	8	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 213	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Chesapeake and Ohio Railway Co.

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
June 30 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED: DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED: NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 21	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	31		
3.	(8) TIES	124		
4.	(9) RAILS	1,749	NOTHING	
5.	(10) OTHER TRACK MATERIAL	51		
6.	(11) BALLAST	30		
7.	(12) TRACK LAYING AND SURFACING	82		
8.	(20) SHOPS AND ENGINEHOUSES	50		
9.	(25) TOFC/COFC TERMINALS	1		
10.	(26) COMMUNICATION SYSTEMS	1		
11.	(27) SIGNALS AND INTERLOCKERS	63		
12.	(29) POWER PLANTS	2		
13.	(37) ROADWAY MACHINES	500		
14.	(44) SHOP MACHINERY	50		
15.	(45) POWER-PLANT MACHINERY	37		
16.	ALL OTHER ROAD	76	39	
17.	TOTAL - ROAD EXPENDITURES	1,516		
	EQUIPMENT			
18.	(52) LOCOMOTIVES	26		
19.	(53) FREIGHT TRAIN CARS	24,111		
20.	(55) HIGHWAY REVENUE EQUIPMENT	7		
21.	(57) WORK EQUIPMENT	121	REPORT	
22.	ALL OTHER EQUIPMENT	380		
23.	TOTAL - EQUIPMENT EXPENDITURES	24,745		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	1,100		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 27,400	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in column (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
CHESAPEAKE & OHIO RAILWAY

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

QUARTER ENDING
JUNE 30 1975

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX-305 REVENUES APPLIED (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 124	$ Nothing
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	42	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	78	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	27	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	1,749	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	61	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	51	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 00	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	122,135	to
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	47,001	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	11,805	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	18,401	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	8,970	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	626	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	465	Report
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	622	
29.	TOTAL (LINES 3 through 28)[2]		436,674	

1. *Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE 1 - EQUIPMENT DATA AND SLOW ORDER TRACK

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
June 30, 1975

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS LOCATED ON CARRIER'S LINES	
			NUMBER (b)	PERCENT (c)
1.	BOX CARS	12,393	1,442	11.6
2.	REFRIGERATOR CARS	[illegible]	[illegible]	[illegible]
3.	GONDOLAS	4,635	761	[illegible]
4.	HOPPERS	10,270	1,[illegible]	[illegible]
5.	COVERED HOPPERS	2,[illegible]	[illegible]	[illegible]
6.	FLAT CARS	823	215	[illegible]
7.	OTHER REVENUE CARS	207	[illegible]	[illegible]
8.	TOTAL-REVENUE CARS	70,352	3,240	4.6
9.	COMPANY SERVICE CARS	1,822	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	976	931	45

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	42	[illegible]
14.	TOTAL	42	67.7

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 [illegible]

CERTIFICATION

I, the undersigned J. G. Lawler, Asst. Vice President & Controller of
(Print or type name and title)

The Chesapeake and Ohio Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

J G Lawler
Signature

(301) 237 - 3646
Telephone No. (Including Area Code)

August 8, 1975
Date

ACC-107 [illegible]

PAGE 1 of 10

INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE A - REVENUES OBTAINED[a] *(Report dollars and ton-miles in thousands)*	NAME OF RAILROAD The Baltimore and Ohio Railroad Company QUARTER ENDING June 30, 197

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$
2.	REVENUE TON-MILES FOR THIS QUARTER.....	
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02284
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 5,193
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	150,851
6.	TOTAL REVENUES FROM EX PARTE 305.....	22,974
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 1,277
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	8,411
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	13,286
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF April	$ 3,147
13.	FOR THE MONTH OF	
14.	FOR THE MONTH OF June	4,067
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 10,291

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 100.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

The Baltimore and Ohio Railroad Company
Note to Schedule A - Revenues Obtained
for the quarter ended June 30, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
June 30, — 197

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(Dollars)	
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
June 30, 197

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (a) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. *Costs expressed in terms of wage rates and prices as of* _____

2. *Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.*

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

QUARTER ENDING
June 30, 1975

LINE NO.	ACCOUNT	AMOUNT (Dollars)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent is not required to report on this schedule.

ACC-107 (10/73)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
BALTIMORE AND OHIO RAILROAD COMPANY

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
June 30, 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
1.	(201) SUPERINTENDENCE	$ 2,274	
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	102	
3.	- WAY SWITCHING TRACKS	62	
4.	- RUNNING TRACKS	2,032	
5.	(212) TIES - YARD SWITCHING TRACKS	141	
6.	- WAY SWITCHING TRACKS	87	
7.	- RUNNING TRACKS	2,931	
8.	(214) RAILS - YARD SWITCHING TRACKS	219	
9.	- WAY SWITCHING TRACKS	34	
10.	- RUNNING TRACKS	1,151	
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	195	
12.	- WAY SWITCHING TRACKS	25	
13.	- RUNNING TRACKS	849	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	692	
15.	- WAY SWITCHING TRACKS	137	
16.	- RUNNING TRACKS	5,160	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	92	NOTHING
19.	- WAY SWITCHING TRACKS	71	
20.	- RUNNING TRACKS	2,376	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	1,444	
22.	- WAY SWITCHING TRACKS	433	
23.	- RUNNING TRACKS	14,579	
24.	(227) STATIONS AND OFFICE BUILDINGS	409	
25.	(235) SHOPS AND ENGINEHOUSES	265	
26.	(247) COMMUNICATION SYSTEMS	335	
27.	(249) SIGNALS AND INTERLOCKERS	1,331	
28.	(269) ROADWAY MACHINES	754	
29.	(271) SMALL TOOLS AND SUPPLIES	204	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	507	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	1,643	
32.	SUB-TOTAL (LINES 24 to 31)	6,603	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	669	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(257)	
35.	SUB-TOTAL (LINES 33 and 34)	412	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	25,655	
37.	(266-267) DEPRECIATION AND RETIREMENTS	1,685	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	27,340	
39.	FREIGHT EXPENSE[2]	27,310	
40.	PASSENGER EXPENSE[2]	30	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1,653	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which is a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of gave proportion on Annual Report R-1.

ACC-107 (10/73)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
BALTIMORE AND OHIO RAILROAD COMPANY

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
June 30,

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE 305 REVENUES APPLIED (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 779	
2.	(302) SHOP MACHINERY	251	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1 504	
4.	-- OTHER	5 037	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	9 499	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	184	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	492	NOTHING
8.	SUB-TOTAL (LINES 1 to 7)	18 156	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	1 508	TO
10.	TOTAL (LINES 8 + 9)	19 664	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR.	198	REPORT
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR.	(48)	
13.	SUB-TOTAL (LINES 11 - 12)	150	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	2 861	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	22 675	
16.	FREIGHT EXPENSE[2]	22 491	
17.	PASSENGER EXPENSE[2]	184	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 604	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*

2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

ACC-107 (12/72)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Baltimore and Ohio Railroad Co.

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
June 30 1973

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED: DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED: NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 7	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	-		
3.	(8) TIES	37		
4.	(9) RAILS	1 2		
5.	(10) OTHER TRACK MATERIAL	-		
6.	(11) BALLAST	-		
7.	(12) TRACK LAYING AND SURFACING	20		
8.	(20) SHOPS AND ENGINEHOUSES	-		
9.	(25) TOFC/COFC TERMINALS	-		
10.	(26) COMMUNICATION SYSTEMS	-		
11.	(27) SIGNALS AND INTERLOCKERS	-		
12.	(29) POWER PLANTS	-		
13.	(37) ROADWAY MACHINES	-		
14.	(44) SHOP MACHINERY	-		
15.	(45) POWER-PLANT MACHINERY	-		
16.	ALL OTHER ROAD	-		
17.	TOTAL - ROAD EXPENDITURES			
	EQUIPMENT			
18.	(52) LOCOMOTIVES	20 [illegible]	[illegible]	
19.	(53) FREIGHT TRAIN CARS	[illegible]		
20.	(55) HIGHWAY REVENUE EQUIPMENT	1		
21.	(57) WORK EQUIPMENT	2		
22.	ALL OTHER EQUIPMENT	2		
23.	TOTAL - EQUIPMENT EXPENDITURES	[illegible]		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES	-		
25.	(80) OTHER ELEMENTS OF INVESTMENTS	-		
26.	(90) CONSTRUCTION WORK IN PROCESS	[illegible]		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ [illegible]	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by the Commission for the use of Ex Parte 305 funds.*

ACC-107 (12/72)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD: Baltimore and Ohio RR

QUARTER ENDING: June 30 1975

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID

Report dollars in thousands, units in whole numbers.

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 224	Not Available
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	112	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	27	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	12	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	1,151	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	239	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	51	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 3	-
			(WHOLE NUMBERS)	
15.	TOTAL TIES LAID			
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	222,122	
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	431,308	-
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	3,549	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	55,656	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	5,904	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	2,364	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	459	
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	33	
29.	TOTAL (LINES 3 through 28)[2]		693,214	Report

1. *Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD: The Baltimore and Ohio Railroad Company

QUARTER ENDING: June 30, 1975

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERSCORING OR AWAITING REPAIR	
			NUMBER (b)	PERCENT (c)
1.	BOX CARS	11,792	2,915	24.7
2.	REFRIGERATOR CARS	678	71	10.5
3.	GONDOLAS	9,692	1,234	12.7
4.	HOPPERS	20,641	903	4.4
5.	COVERED HOPPERS	3,430	570	16.6
6.	FLAT CARS	587	123	21.0
7.	OTHER REVENUE CARS	359	59	16.4
8.	TOTAL-REVENUE CARS	47,547	5,775	12.1
9.	COMPANY SERVICE CARS	1,280	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	1,018	964	54

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	1	.1
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	103	134.8
14.	TOTAL	104	134.9

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

PAGE 10 of 1

CERTIFICATION

I, the undersigned R. D. Taylor, Asst. Vice President & Controller of
(Print or type name and title)

The Baltimore and Ohio Railroad Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

R. D. Taylor
Signature

(301) 237 - 3616
Telephone No. (Include Area Code)

August 8
Date, 197 4

ACC-107 (10/74)

PAGE 1 of 6

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED[1]
(Report dollars and cents in thousands)

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
June 30 197

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ [illegible]
2.	REVENUE TON-MILES FOR THIS QUARTER.....	[illegible]
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	[illegible]
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ [illegible]
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	[illegible]
6.	TOTAL REVENUES FROM EX PARTE 305.....	[illegible]
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ [illegible]
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	[illegible]
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	[illegible]
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 301 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF April	$ [illegible]
13.	FOR THE MONTH OF May	[illegible]
14.	FOR THE MONTH OF June	[illegible]
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ [illegible]

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 130.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

ACC-107 (10/74)

Western Maryland Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended June 30, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 ACCRUALS ONLY)

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
June 30, - 197

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(Balance In Account 716)	
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

Respondent has nothing to report on this schedule.

ACC-197 (10-

BEST COPY AVAILABLE

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
June 30, 197

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (a) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28		

1. *Costs expressed in terms of wage rates and prices as of* _____

2. *Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.*

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
June 30, 197

LINE NO.	ACCOUNT	AMOUNT (a)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 306 REVENUES

QUARTER ENDING
June 30 197

LINE NO	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 306 REVENUE APPLIED (b)
		DOLLARS IN	DOLLARS IN
1.	(201) SUPERINTENDENCE	$	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	14	
3.	- WAY SWITCHING TRACKS		
4.	- RUNNING TRACKS		
5.	(212) TIES - YARD SWITCHING TRACKS		
6.	- WAY SWITCHING TRACKS	2	
7.	- RUNNING TRACKS		
8.	(214) RAILS - YARD SWITCHING TRACKS	-	
9.	- WAY SWITCHING TRACKS		
10.	- RUNNING TRACKS	(3	
11.	(216) OTHER TRACK MATERIAL - YARD SWITCHING TRACKS		
12.	- WAY SWITCHING TRACKS	4	
13.	- RUNNING TRACKS		
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS		
15.	- WAY SWITCHING TRACKS	23	
16.	- RUNNING TRACKS	479	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	2	
19.	- WAY SWITCHING TRACKS		
20.	- RUNNING TRACKS		
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS		
22.	- WAY SWITCHING TRACKS		
23.	- RUNNING TRACKS		
24.	(227) STATIONS AND OFFICE BUILDINGS		
25.	(235) SHOPS AND ENGINEHOUSES	55	
26.	(247) COMMUNICATION SYSTEMS	42	
27.	(249) SIGNALS AND INTERLOCKERS		
28.	(269) ROADWAY MACHINES	42	
29.	(271) SMALL TOOLS AND SUPPLIES	60	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS		
31.	(227-262, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	4	
32.	SUB-TOTAL (LINES 24 to 31)		
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR		
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR		
35.	SUB-TOTAL (LINES 33 and 34)		
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35		
37.	(266-267) DEPRECIATION AND RETIREMENTS		
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)		
39.	FREIGHT EXPENSE[2]		
40.	PASSENGER EXPENSE[2]		
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 306 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)*

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD

SCHEDULE E-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 306 REVENUES

QUARTER ENDING
June 30 197

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 306 REVENUE APPLIED (b)
		DOLLARS IN	DOLLARS IN
1.	(301) SUPERINTENDENCE	$ 3	$
2.	(302) SHOP MACHINERY	43	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	135	
4.	-- OTHER	744	NOTHING
5.	(314) FREIGHT TRAIN CARS - REPAIRS	1245	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	56	TO
8.	SUB-TOTAL (LINES 1 to 7)	2231	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	204	
10.	TOTAL (LINES 8 + 9)	2465	REPORT
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR.	5	
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR.	(17	
13.	SUB-TOTAL (LINES 11 - 12)	(12	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	811	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	3264	
16.	FREIGHT EXPENSE[2]	32	
17.	PASSENGER EXPENSE[2]	-	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 18	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 306 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Based on use of same proportion as Annual Report R-1.

ACC-107

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD: Western Maryland Railway Co.

QUARTER ENDING: June 30 19 75

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED: DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED: NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ -	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	-		
3.	(8) TIES	-		
4.	(9) RAILS	-		
5.	(10) OTHER TRACK MATERIAL	-		
6.	(11) BALLAST	-		
7.	(12) TRACK LAYING AND SURFACING	-		
8.	(20) SHOPS AND ENGINEHOUSES	-		
9.	(25) TOFC/COFC TERMINALS	-		
10.	(26) COMMUNICATION SYSTEMS	-		
11.	(27) SIGNALS AND INTERLOCKERS	-		
12.	(29) POWER PLANTS	-		
13.	(37) ROADWAY MACHINES	-		
14.	(44) SHOP MACHINERY	-		
15.	(45) POWER-PLANT MACHINERY	-		
16.	ALL OTHER ROAD	-		
17.	TOTAL - ROAD EXPENDITURES	-		
	EQUIPMENT			
18.	(52) LOCOMOTIVES	-		
19.	(53) FREIGHT TRAIN CARS	-		
20.	(55) HIGHWAY REVENUE EQUIPMENT	-		
21.	(57) WORK EQUIPMENT	-		
22.	ALL OTHER EQUIPMENT	-		
23.	TOTAL - EQUIPMENT EXPENDITURES	-		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES	-		
25.	(80) OTHER ELEMENTS OF INVESTMENTS	-		
26.	(90) CONSTRUCTION WORK IN PROGRESS	-		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ -	$	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

NAME OF RAILROAD: Western Maryland Ry.

QUARTER ENDING: June 30 19 75

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[2] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 92	* Nothing
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	6	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	-	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	-	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)		
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)		
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)		
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$	$
			(WHOLE NUMBERS)	
15.	TOTAL TIES LAID			
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	9,077	
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	22,837	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	-	* Nothing
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	-	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)		
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)		
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)		
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)		
29.	TOTAL (LINES 3 through 28)[2]		32,012	Report

1. *Insert in colum (b) that portion of the expenses and units shown in colum (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland Railway Company

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

QUARTER ENDING
June 30, 197[illegible]

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS LOCATED ON RAILWAY LINES	
			NUMBER (b)	PERCENT (c)
1.	BOX CARS	1,115	112	10.0
2.	REFRIGERATOR CARS	[illegible]	0	0
3.	GONDOLAS	[illegible]	[illegible]	[illegible]
4.	HOPPERS	[illegible]	[illegible]	[illegible]
5.	COVERED HOPPERS	[illegible]	[illegible]	[illegible]
6.	FLAT CARS	[illegible]	[illegible]	[illegible]
7.	OTHER REVENUE CARS	[illegible]	[illegible]	[illegible]
8.	TOTAL-REVENUE CARS	2,270	660	5.3
9.	COMPANY SERVICE CARS	152	[illegible]	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	120	117	3

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	[illegible]	-
13.	RUNNING TRACKS	[illegible]	[illegible]
14.	TOTAL	6	[illegible]

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

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PAGE 10 OF [illegible]

CERTIFICATION

I, the undersigned [illegible], Asst. Vice President - Comptroller of
(Print or type name and title)

[illegible]
(Full name of reporting company), state that this report was prepared by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

[illegible]
Signature

(301) [illegible]
Telephone No. (Include Area Code)

August 11, 1975
Date

ACC-107 (10-74)

PAGE 1 of 1

INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE A - REVENUES OBTAINED[a] *(Report dollars and ton-miles in thousands)*	NAME OF RAILROAD The Chesapeake and Ohio Railway Company QUARTER ENDING September 30, 1975

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 124,488
2.	REVENUE TON-MILES FOR THIS QUARTER.....	5,794,610
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02148 ¢
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 8,115
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	$ 132,603
6.	TOTAL REVENUES FROM EX PARTE 305.....	$ 9,909
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 3,162
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	1,414
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	5,333
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF July	$ 3,094
13.	FOR THE MONTH OF August	2,736
14.	FOR THE MONTH OF September	3,091
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 8,921

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

AOC-107 (10/74)

The Chesapeake and Ohio Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended September 30, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
September 30, 1975

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN	THOUSANDS)
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.

2. Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.

Respondent has nothing to report on this schedule.

ACC-107 (10-74)

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD
The Chesapeake and Ohio Railway Company

QUARTER ENDING
September 30, 1975

LINE NO.	ITEM	AMOUNT (Thousands)[1] (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. Costs expressed in terms of wage rates and prices as of_____

2. Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS	NAME OF RAILROAD The Chesapeake and Ohio Railway Company QUARTER ENDING September 30, 1975

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(25) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(39) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(51) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(54) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

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PAGE B of 1

INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES	NAME OF RAILROAD THE CHESAPEAKE AND OHIO RAILWAY CO. QUARTER ENDING September 30, 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS IN	EX PARTE NO. 305 REVENUES APPLIED* (b) THOUSANDS
1.	(201) SUPERINTENDENCE	$ 1 281	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	44	
3.	- WAY SWITCHING TRACKS	53	
4.	- RUNNING TRACKS	1 026	
5.	(212) TIES - YARD SWITCHING TRACKS	70	
6.	- WAY SWITCHING TRACKS	48	
7.	- RUNNING TRACKS	932	
8.	(214) RAILS - YARD SWITCHING TRACKS	1	
9.	- WAY SWITCHING TRACKS	97	
10.	- RUNNING TRACKS	1 907	NOTHING
11.	(216) OTHER TRACK MATERIAL - YARD SWITCHING TRACKS	123	
12.	- WAY SWITCHING TRACKS	40	
13.	- RUNNING TRACKS	787	TO
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	269	
15.	- WAY SWITCHING TRACKS	195	
16.	- RUNNING TRACKS	3 819	REPORT
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS	48	
19.	- WAY SWITCHING TRACKS	40	
20.	- RUNNING TRACKS	770	
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	555	
22.	- WAY SWITCHING TRACKS	473	
23.	- RUNNING TRACKS	9 241	
24.	(227) STATIONS AND OFFICE BUILDINGS	214	
25.	(235) SHOPS AND ENGINEHOUSES	339	
26.	(247) COMMUNICATION SYSTEMS	445	
27.	(249) SIGNALS AND INTERLOCKERS	1 134	
28.	(269) ROADWAY MACHINES	558	
29.	(271) SMALL TOOLS AND SUPPLIES	545	
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	457	
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	2 383	
32.	SUB-TOTAL (LINES 24 to 31)	6 075	
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	953	
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(337)	
35.	SUB-TOTAL (LINES 33 and 34)	616	
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	18 241	
37.	(266-267) DEPRECIATION AND RETIREMENTS	1 609	
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	19 850	
39.	FREIGHT EXPENSE[2]	19 844	
40.	PASSENGER EXPENSE[2]	6	
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 465	$

1. *Insert in colum (b) that portion of the expense shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

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SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
THE CHESAPEAKE AND OHIO RAILWAY CO.

QUARTER ENDING
September 30, 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 972	$
2.	(302) SHOP MACHINERY	786	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1 825	
4.	-- OTHER	4 246	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	8 811	NOTHING
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	692	TO
8.	SUB-TOTAL (LINES 1 to 7)	17 332	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	2 199	REPORT
10.	TOTAL (LINES 8 + 9)	19 531	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR	103	
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR	(28)	
13.	SUB-TOTAL (LINES 11 - 12)	75	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	6 444	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	26 050	
16.	FREIGHT EXPENSE[2]	26 006	
17.	PASSENGER EXPENSE[2]	44	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 2 222	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*

2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis ofsame proportion as Annual Report R-1.

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SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Chesapeake and Ohio Railway Company

QUARTER ENDING
September 30 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX-305 REVENUES APPLIED: DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED: NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 17	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	49		
3.	(8) TIES	84		
4.	(9) RAILS	374	NOTHING	
5.	(10) OTHER TRACK MATERIAL	232		
6.	(11) BALLAST	108		
7.	(12) TRACK LAYING AND SURFACING	52		
8.	(20) SHOPS AND ENGINEHOUSES	148		
9.	(25) TOFC/COFC TERMINALS			
10.	(26) COMMUNICATION SYSTEMS	32		
11.	(27) SIGNALS AND INTERLOCKERS	43		
12.	(29) POWER PLANTS	1		
13.	(37) ROADWAY MACHINES	923		
14.	(44) SHOP MACHINERY	79		
15.	(45) POWER-PLANT MACHINERY	9		
16.	ALL OTHER ROAD	117		
17.	TOTAL - ROAD EXPENDITURES	2,268		
	EQUIPMENT		TO	
18.	(52) LOCOMOTIVES	(39)		
19.	(53) FREIGHT TRAIN CARS	17,297		
20.	(55) HIGHWAY REVENUE EQUIPMENT			
21.	(57) WORK EQUIPMENT	349		
22.	ALL OTHER EQUIPMENT	130		
23.	TOTAL - EQUIPMENT EXPENDITURES	17,737		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	1,421		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 21,426	$ REPORT	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A'e and B'e on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

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Bureau of Accounts

NAME OF RAILROAD
The Chesapeake & Ohio Railway Co.

QUARTER ENDING
September 30, 1975

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID

Report dollars in thousands, units in whole nos.

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			Nothing to Report
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 195	
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	104	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	104	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	36	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	2,229	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	61	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	68	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 88	
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	192,781	
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	607,140	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	15,360	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	167,868	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	11,433	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	1,212	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	620	
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	800	
29.	TOTAL (LINES 3 through 28)[2]		1,000,599	

1. *Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Chesapeake and Ohio Railway Co.

QUARTER ENDING
September 1975

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDER REPAIR OR AWAITING REPAIR: NUMBER (b)	HOME CARS UNDER REPAIR OR AWAITING REPAIR: PERCENT (c)
1.	BOX CARS	12,281	1774	14.4
2.	REFRIGERATOR CARS	1,277	133	10.4
3.	GONDOLAS	6,620	931	14.1
4.	HOPPERS	46,160	751	1.6
5.	COVERED HOPPERS	2,771	274	9.9
6.	FLAT CARS	818	33	4.0
7.	OTHER REVENUE CARS	607	2	0.3
8.	TOTAL-REVENUE CARS	70,534	3898	5.5
9.	COMPANY SERVICE CARS	1806	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	977	922	55

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	52	51.7
14.	TOTAL	52	51.7

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

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CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

The Chesapeake and Ohio Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B. G. Lawler
Signature

(301) 237 - 3646
Telephone No. (Include Area Code)

November 10, 1975
Date

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED[a]
(Report dollars and ton-miles in thousands).

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
September 30, 1975

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 142,180
2.	REVENUE TON-MILES FOR THIS QUARTER.....	5,784,014
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02458
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 5,442
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	$ 147,622
6.	TOTAL REVENUES FROM EX PARTE 305.....	$ 11,136
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 3,590
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	1,811
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	5,735
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1975 for the three months of this quarter.	
12.	FOR THE MONTH OF July	$ 2,975
13.	FOR THE MONTH OF August	3,417
14.	FOR THE MONTH OF September	2,564
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 8,956

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 189.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

The Baltimore and Ohio Railroad Company
Note to Schedule A - Revenues Obtained
for the quarter ended September 30, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS (EX PARTE NO. 305 REVENUES ONLY)	NAME OF RAILROAD The Baltimore and Ohio Railroad Company QUARTER ENDING September 30, 1975

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN THOUSANDS)	
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.

2. Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.

Respondent has nothing to report on this schedule.

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SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
September 30, 1975

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. *Costs expressed in terms of wage rates and prices as of*_____

2. *Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.*

Respondent has nothing to report on this schedule.

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SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD
The Baltimore and Ohio Railroad Company

QUARTER ENDING
September 30, 1975

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(31) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

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NAME OF RAILROAD
Baltimore & Ohio Railroad Company

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
September 30, 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN THOUSANDS	
1.	(201) SUPERINTENDENCE	$ 1 653	
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	107	
3.	- WAY SWITCHING TRACKS	42	
4.	- RUNNING TRACKS	1 413	
5.	(212) TIES - YARD SWITCHING TRACKS	212	
6.	- WAY SWITCHING TRACKS	42	
7.	- RUNNING TRACKS	1 426	
8.	(214) RAILS - YARD SWITCHING TRACKS	8	
9.	- WAY SWITCHING TRACKS	70	
10.	- RUNNING TRACKS	2 337	
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	89	
12.	- WAY SWITCHING TRACKS	46	
13.	- RUNNING TRACKS	1 540	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	639	
15.	- WAY SWITCHING TRACKS	158	
16.	- RUNNING TRACKS	5 300	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS - YARD SWITCHING TRACKS	117	NOTHING
18.	- WAY SWITCHING TRACKS	47	
19.	- RUNNING TRACKS	1 569	TO
20.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	1 172	
21.	- WAY SWITCHING TRACKS	405	REPORT
22.	- RUNNING TRACKS	13 585	
23.	(227) STATIONS AND OFFICE BUILDINGS	368	
24.	(235) SHOPS AND ENGINEHOUSES	218	
25.	(247) COMMUNICATION SYSTEMS	730	
26.	(249) SIGNALS AND INTERLOCKERS	1 400	
27.	(269) ROADWAY MACHINES	601	
28.	(271) SMALL TOOLS AND SUPPLIES	599	
29.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	568	
30.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	1 532	
31.	SUB-TOTAL (LINES 24 to 31)	6 016	
32.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	631	
33.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	(310)	
34.	SUB-TOTAL (LINES 33 and 34)	321	
35.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	23 152	
36.	(266-267) DEPRECIATION AND RETIREMENTS	3 154	
37.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	26 306	
38.	FREIGHT EXPENSE[2]	26 277	
39.	PASSENGER EXPENSE[2]	29	
40.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 937	$
41.			

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

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NAME OF RAILROAD
Baltimore & Ohio Railroad Company

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
September 30 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 1 067	$
2.	(302) SHOP MACHINERY	317	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	1 315	
4.	-- OTHER	3 695	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	8 854	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	132	
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	504	
8.	SUB-TOTAL (LINES 1 to 7)	15 884	NOTHING
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	1 627	
10.	TOTAL (LINES 8 + 9)	17 511	TO
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR	186	
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR	(56)	
13.	SUB-TOTAL (LINES 11 - 12)	130	REPORT
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	3 179	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	20 820	
16.	FREIGHT EXPENSE[2]	20 651	
17.	PASSENGER EXPENSE[2]	169	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 1 720	$

1. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportions as Annual Report R-1.

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INTERSTATE COMMERCE COMMISSION
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SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
Baltimore and Ohio Railroad Company

QUARTER ENDING
September 30 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED: DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED: NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$ 29	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	105		
3.	(8) TIES	14	NOTHING	
4.	(9) RAILS	344		
5.	(10) OTHER TRACK MATERIAL	418		
6.	(11) BALLAST	58		
7.	(12) TRACK LAYING AND SURFACING	51		
8.	(20) SHOPS AND ENGINEHOUSES	104		
9.	(25) TOFC/COFC TERMINALS	4		
10.	(26) COMMUNICATION SYSTEMS	6		
11.	(27) SIGNALS AND INTERLOCKERS	7		
12.	(29) POWER PLANTS			
13.	(37) ROADWAY MACHINES	801		
14.	(44) SHOP MACHINERY	11		
15.	(45) POWER-PLANT MACHINERY			
16.	ALL OTHER ROAD	630		
17.	TOTAL - ROAD EXPENDITURES	2,582		
	EQUIPMENT		TO	
18.	(52) LOCOMOTIVES	1,294		
19.	(53) FREIGHT TRAIN CARS	57,082		
20.	(55) HIGHWAY REVENUE EQUIPMENT	(1)		
21.	(57) WORK EQUIPMENT	2		
22.	ALL OTHER EQUIPMENT	196		
23.	TOTAL - EQUIPMENT EXPENDITURES	58,573		
24.	(71, 75, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	1,967		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 63,122	$ REPORT	$

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in column (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.*

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

NAME OF RAILROAD
The Baltimore & Ohio Railroad Co.

QUARTER ENDING
September 30, 1975

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			Nothing to Report
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 280	
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	117	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	36	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	16	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	1,863	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	158	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	68	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ 4	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	278,184	
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	932,222	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	4,732	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	74,208	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	9,553	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	3,152	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	612	
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	44	
29.	TOTAL (LINES 3 through 28)[2]		1,305,249	

1. *Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD: Baltimore and Ohio Railroad Co.

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

QUARTER ENDING: September 1975

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDER REPAIR OR AWAITING REPAIR: NUMBER (b)	HOME CARS UNDER REPAIR OR AWAITING REPAIR: PERCENT (c)
1.	BOX CARS	11,715	3083	26.3
2.	REFRIGERATOR CARS	678	75	11.1
3.	GONDOLAS	9,678	1383	14.3
4.	HOPPERS	21,872	1066	4.9
5.	COVERED HOPPERS	3,818	509	13.3
6.	FLAT CARS	584	137	23.5
7.	OTHER REVENUE CARS	329	25	7.6
8.	TOTAL-REVENUE CARS	48,674	6278	12.9
9.	COMPANY SERVICE CARS	1290	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	1007	975	32

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	95	160.6
14.	TOTAL	95	160.6

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

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CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

The Baltimore and Ohio Railroad Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B G Lawler
Signature

(301) 237 - 3646
Telephone No. (Include Area Code)

November 10, 1975
Date

ACC-107 (10/74)

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INTERSTATE COMMERCE COMMISSION Bureau of Accounts	NAME OF RAILROAD Western Maryland Railway
SCHEDULE A - REVENUES OBTAINED[a] *(Report dollars and ton-miles in thousands)*	QUARTER ENDING September 30, 1975

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$ 15,660
2.	REVENUE TON-MILES FOR THIS QUARTER.....	536,246
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	.02920 ¢
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$ 1,137
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	$ 16,797
6.	TOTAL REVENUES FROM EX PARTE 305.....	$ 1,256
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$ 404
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	409
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	443
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$ -
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	-
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF July	$ 414
13.	FOR THE MONTH OF August	319
14.	FOR THE MONTH OF September	319
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$ 1,052

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

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Western Maryland Railway Company
Note to Schedule A - Revenues Obtained
for the quarter ended September 30, 1975

The effective rates of increase (authorized rate less exceptions and holddowns) were determined for the various categories of traffic. Using these rates, revenues excluding those generated by Ex Parte 305 were calculated. The difference between this result and revenues actually recorded was considered to represent revenues generated from Ex Parte 305 as shown on line 6 of Schedule A.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
September 30, 1975

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN	THOUSANDS)
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.

2. Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.

Respondent has nothing to report on this schedule.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
September 30, 1975

LINE NO.	ITEM	AMOUNT (Thousands) (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

*1. Costs expressed in terms of wage rates and prices as of*_____

2. Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.

Respondent has nothing to report on this schedule.

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FMSL A c[illegible]

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD
Western Maryland Railway Company

QUARTER ENDING
September 30, 1975

LINE NO.	ACCOUNT	AMOUNT (Three digits)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

Respondent has nothing to report on this schedule.

ACC-107 (10/7[illegible]

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD
WESTERN MARYLAND RAILWAY CO.

QUARTER ENDING
September 30 - 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS IN THOUSANDS	EX PARTE NO. 305 REVENUES APPLIED[1] (b) THOUSANDS
1.	(201) SUPERINTENDENCE	$ 207	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS	4	
3.	- WAY SWITCHING TRACKS	5	
4.	- RUNNING TRACKS	93	
5.	(212) TIES - YARD SWITCHING TRACKS	(2)	
6.	- WAY SWITCHING TRACKS	6	
7.	- RUNNING TRACKS	126	
8.	(214) RAILS - YARD SWITCHING TRACKS	16	
9.	- WAY SWITCHING TRACKS	(15)	
10.	- RUNNING TRACKS	(299)	
11.	(216) OTHER TRACK MATERIAL- YARD SWITCHING TRACKS	1	
12.	- WAY SWITCHING TRACKS	4	
13.	- RUNNING TRACKS	81	
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS	13	
15.	- WAY SWITCHING TRACKS	24	
16.	- RUNNING TRACKS	492	
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS - YARD SWITCHING TRACKS	8	NOTHING
18.	- WAY SWITCHING TRACKS	7	
19.	- RUNNING TRACKS	139	
20.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS	40	
21.	- WAY SWITCHING TRACKS	31	
22.	- RUNNING TRACKS	632	10
23.	(227) STATIONS AND OFFICE BUILDINGS	25	
24.	(235) SHOPS AND ENGINEHOUSES	42	
25.	(247) COMMUNICATION SYSTEMS	25	
26.	(249) SIGNALS AND INTERLOCKERS	101	
27.	(269) ROADWAY MACHINES	55	
28.	(271) SMALL TOOLS AND SUPPLIES	54	
29.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS	55	REPORT
30.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS	378	
31.	SUB-TOTAL (LINES 24 to 31)	735	
32.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR	24	
33.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR	-	
34.	SUB-TOTAL (LINES 33 and 34)	24	
35.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35	1 669	
36.	(266-267) DEPRECIATION AND RETIREMENTS	194	
37.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)	1 863	
38.	FREIGHT EXPENSE[2]	1 863	
39.	PASSENGER EXPENSE[2]	-	
40.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 168	$
41.			

1. *Insert in column (b) that portion of the expense shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*
2. *The separation between freight and passenger service may be estimated. (Explain procedure)* Estimated on basis of same proportion as Annual Report R-1.

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
WESTERN MARYLAND RAILWAY CO.

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
September 30 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED (b)
		DOLLARS IN THOUSANDS	
1.	(301) SUPERINTENDENCE	$ 39	$
2.	(302) SHOP MACHINERY	27	
3.	(311) LOCOMOTIVES - REPAIRS -- YARD	90	
4.	-- OTHER	406	
5.	(314) FREIGHT TRAIN CARS - REPAIRS	1 124	
6.	(317) PASSENGER TRAIN CARS - REPAIRS	-	NOTHING
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS	54	
8.	SUB-TOTAL (LINES 1 to 7)	1 740	
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS	206	TO
10.	TOTAL (LINES 8 + 9)	1 946	
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR.	6	
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR.	(16)	REPORT
13.	SUB-TOTAL (LINES 11 - 12)	(10)	
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS	808	
15.	GRAND TOTAL (LINES 10 + 13 + 14)	2 744	
16.	FREIGHT EXPENSE[2]	2 744	
17.	PASSENGER EXPENSE[2]	-	
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$ 165	$

1. *Insert in colum (b) that portion of the expenses shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.*

2. *The separation between freight and passenger service may be estimated. (Explain basis used)* Estimated on basis of same proportion as Annual Report R-1

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland Railway Company

SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING
September 30, 1975

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX-305 REVENUES APPLIED: DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED: NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	4	NOTHING	
3.	(8) TIES	3		
4.	(9) RAILS	5		
5.	(10) OTHER TRACK MATERIAL			
6.	(11) BALLAST	9		
7.	(12) TRACK LAYING AND SURFACING			
8.	(20) SHOPS AND ENGINEHOUSES	197		
9.	(25) TOFC/COFC TERMINALS	(1)		
10.	(26) COMMUNICATION SYSTEMS			
11.	(27) SIGNALS AND INTERLOCKERS			
12.	(29) POWER PLANTS	51		
13.	(37) ROADWAY MACHINES			
14.	(44) SHOP MACHINERY			
15.	(45) POWER-PLANT MACHINERY	5		
16.	ALL OTHER ROAD	273		
17.	TOTAL - ROAD EXPENDITURES			
	EQUIPMENT			
18.	(52) LOCOMOTIVES	9	TO	
19.	(53) FREIGHT TRAIN CARS			
20.	(55) HIGHWAY REVENUE EQUIPMENT			
21.	(57) WORK EQUIPMENT			
22.	ALL OTHER EQUIPMENT	13		
23.	TOTAL - EQUIPMENT EXPENDITURES	22		
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS	67		
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$ 362	$	REPORT $

1. *Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.*

2. *Insert in colum (b) that portion of the expense shown in colum (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs and insert in colum (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for which Ex Parte 305 funds were paid.*

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INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland Railway Co.

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

QUARTER ENDING
September 30, 1975

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			Nothing to Report
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$ 24	
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)	7	
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)	--	
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)	--	
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)	--	
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)	--	
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)	--	
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$ --	
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)	22,709	
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)	63,720	
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)	--	
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)	--	
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)	--	
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)	--	
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)	--	
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)	--	
29.	TOTAL (LINES 3 through 28)[2]		86,460	

1. *Insert in column (b) that portion of the expenses and units shown in column (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

ACC-107 (10/74)

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

NAME OF RAILROAD
Western Maryland

SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

QUARTER ENDING
September 1975

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDER REPAIR OR AWAITING REPAIR: NUMBER (b)	HOME CARS UNDER REPAIR OR AWAITING REPAIR: PERCENT (c)
1.	BOX CARS	1115	184	16.5
2.	REFRIGERATOR CARS	50	15	30.0
3.	GONDOLAS	835	241	28.9
4.	HOPPERS	5126	421	8.2
5.	COVERED HOPPERS	821	39	4.8
6.	FLAT CARS	217	58	26.7
7.	OTHER REVENUE CARS	76	17	22.4
8.	TOTAL-REVENUE CARS	8240	975	11.8
9.	COMPANY SERVICE CARS	152	Not Available	-

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS	119	118	1

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS	-	-
12.	WAY SWITCHING TRACKS	-	-
13.	RUNNING TRACKS	8	39.2
14.	TOTAL	8	39.2

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

BEST COPY AVAILABLE

PAGE 10 of 1

CERTIFICATION

I, the undersigned B. G. Lawler, Asst. Vice President & Comptroller of
(Print or type name and title)

Western Maryland Railway Company, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

B G Lawler — (301) 237 - 3646
Signature — Telephone No. (Include Area Code)

November 10, 1975
Date

ACC-107 (10/72)

[Service Date June 1974]

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 19th day of June, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

TARIFF OF INCREASED RATES AND CHARGES, X-305-A

Upon consideration of (1) the record in Ex Parte No. 305, (2) the order of June 3, 1974, entered in Ex Parte No. 305, (3) X-305-A Tariff of Increased Rates and Charges, (4) the petitions and/or protests for reconsideration of the order of June 3, 1974, or suspension and investigation of X-305-A Tariff of Increased Rates and Charges, and (5) a reply filed by the railroads.

It appearing, That the order of June 3, 1974, permitted the carriers to cancel the tariff identified as X-305 on one day's notice and to publish on 15 days' notice, subject to certain terms and conditions, a tariff to be designated X-305-A;

It further appearing, That the Commission took the extraordinary action of permitting X-305-A to become effective on 15 days' notice for the following stated reason in addition to other reasons set forth in the order of June 3, 1974:

> "That the Commission, having reviewed the evidence and arguments of the parties, is convinced that the service provided by the Nation's railroads is less than adequate and is in danger of further deterioration detrimental to the public interest, that in order to improve service the railroads must generate additional revenues, and that the increases pro-

posed would, if permitted to become effective, generate additional revenues sufficient to enable the carriers to prevent further deterioration and improve service. However, if the schedules were permitted to become effective as filed and without conditions designed to promote service improvements, the increases proposed would be unjust and unreasonable and contrary to the dictates of the national transportation policy;"

It further appearing, That the carriers on June 20, 1974, did cancel on one day's notice X-305;

It further appearing, That the carriers on June 5, 1974, did publish in accordance with Commission authorization X-305-A to become effective on June 20, 1974;

And it further appearing, That petitioners do not seriously contest the Commission's determination on the need for carriers to increase their revenues so as to improve service; and, accordingly, the Commission declines to exercise its authority, committed to its sound discretion, to suspend or investigate X-305-A;

It is ordered, That the petitions for reconsideration of the June 3, 1974, order be, and they are hereby, denied.

By the Commission.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date, Nov. 7, 1974]

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 4th day of November, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding and the orders entered herein on various dates including June 4, 1974, July 18, 1974, and October 3, 1974;

It appearing, That pursuant to said order of July 18, 1974, certain specified data and information is due to be filed by the carriers on November 15, 1974, namely, estimated and actual operating data reflecting calendar quarter operations;

It further appearing, That to insure uniform reporting, a set of forms has been prepared by the Commission for distribution to the Class I line-haul railroads embraced by the orders herein;

It further appearing, That pursuant to Public Law 93-153, forms of this nature proposed by an agency for use in collecting information must receive clearance from the General Accounting Office (GAO);

It further appearing, That, although a period of 45 days is provided for GAO review, the applicable GAO regulations governing clearance of forms by independent Federal regulatory agencies, specifically section 10.9 thereof, provide for expedited procedures in special circumstances;

And it further appearing, That the Commission intends to request such expedited handling in connection with the proposed reporting forms but that clearance may not be forthcoming in time for the carriers to meet the November 15th reporting date set forth in our order of July 18, 1974;

Wherefore, and for good cause;

It is ordered, That the filing date specified in our prior order be, and it is hereby extended, and the data previously required to be filed on or before the fifteenth day of the second month following the end of the third calendar quarter of 1974, shall be filed not later than December 16, 1974, unless otherwise subsequently ordered by the Commission.

And it is further ordered, That in all other respects the prior orders in this proceeding shall remain in full force and effect without other change in the requirements therein set forth.

By the Commission.

ROBERT OSWALD
Secretary

[SEAL]

[Service Date, Dec. 10, 1974]

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 15th day of November, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

It appearing, That the order dated July 18, 1974, required of the class I line-haul railroads participating in this proceeding that "On or before the fifteenth day of the second month following the end of the third and fourth calendar quarters of 1974 and the first and second calendar quarters of 1975, each class I line-haul railroad shall provide this Commission with an estimate of the freight revenues generated by the increases; and estimate of the costs of deferred plant and equipment maintenance; numbr and percent of bad order cars by type; and miles of track by class on which slow orders were in effect. The report for the third quarter of 1974 should include an estimate of the freight revenues generated by the increases for the period of June 20, 1974, through June 30, 1974. Additionally, each carrier shall report the amount of expenditures made for deferred maintenance of plant and equipment, e.g., by type of car, track, crossties, etc. as well as amounts expended for delayed capital improvements by type of project. Further each carrier shall report the amount of unexpended funds derived from the authorized increases and how these funds are to be expended.";

It further appearing, That the reporting requirements were further detailed in the eighth ordering paragraph of the same order;

It further appearing, That the quarterly reports should also include the number of locomotives owned and leased and number in service;

It further appearing, That the order dated October 3, 1974, allowed railroads in reorganization to transfer funds segregated in Account 716, Capital and Other Reserve Funds, in accordance with accounting instructions in the order dated July 18, 1974 order, to Account 701, Cash, provided other funds are not available and the transfer is necessary to meet cash requirements for continued operations; and that said order of October 3, 1974 also provided that other railroads may file petitions for the use of the Ex Parte No. 305 funds for other purposes if imperative to avoid curtailment of service or in instances where respondents are unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements as defined therein;

And it further appearing, That the directive of the order dated July 18, 1974 stating that the data should be summarized by district, and nationwide, would impose an unnecessary burden on the railroads in that the data filing requirements are directed to individual carriers and that summarization of the data, to the extent required, can and will be performed by the Commission following filing of the reports by individual line-haul railroads.

Wherefore, and for good cause appearing:

It is ordered, That the report forms furnished herewith shall be used by each class I line-haul railroad participating in this proceeding to report the required data, with the first quarterly reporting due on or before January 2, 1975, for the third calendar quarter of 1974, and the quarterly reports for the fourth calendar quarter of 1974 and the first and second calendar quarters of 1975 due on or before February 15, 1975, May 15, 1975 and August 15, 1975, respectively;

It is further ordered, That the original and nine copies of these reports should be filed with the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423;

It is further ordered, That the data furnished should be individually by carrier without summarization by district or nationwide;

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy in the Office of the Commission's Secretary and by filing a copy with the Director, Office of the Federal Register, for publication in the Federal Register.

By the Commission.

JOSEPH M. HARRINGTON
Acting Secretary

[SEAL]

[Service Date, Dec. 18, 1974]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 17th day of December, 1974.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding including the order of the Commission dated October 3, 1974, and the petition of the Grand Trunk Western Railroad Company filed October 30, 1974;

It appearing, That the order dated October 3, 1974, provided in part that any railroad not in reorganization which finds it imperative to expend funds generated by the Ex Parte No. 305 increase for operating purposes to avoid curtailment of transportation service may make application to the Commission, Division 2, for approval of the transfer of Ex Parte No. 305 funds from Account 716, Capital and Other Reserve Funds to Account 701, Cash;

It further appearing, That the petition filed on October 30, 1974, meets the criteria set forth above;

And it further appearing, That, while a grant is warranted under the circumstances presented, petitioner is admonished for its apparent failure to serve all parties in accordance with an order of October 3, 1974, and the parties are herewith warned that failure to comply specifically with the requirements of our order will not be tolerated in the future;

It is ordered, That the petition of the Grand Trunk Western Railroad Company be, and it is hereby, granted and that petitioner be, and it is hereby permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase;

It is further ordered, That, in accordance with petitioner's request, the relief granted in the first ordering

paragraph be, and it is hereby, limited to a six-month period from date of service of this order;

And it is further ordered, That petitions for reconsideration, modification or cancellation of this order must be filed on or before 30 days from service of this order.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

• • • •

COMMISSIONER CLAPP, dissenting:

By orders entered in this proceeding on June 3 and July 18, 1974, the Nation's railroads were permitted to make effective a general increase in rates and charges conditioned upon the additional funds being segregated in Account 716, Capital and Other Reserve Funds, for application solely to deferred maintenance and delayed capital improvements, as defined by the Commission. By further order entered on October 3, 1974, the Commission delegated to Division 2 the responsibility and authority to determine, among other things, whether any railroad not in reorganization should be permitted to transfer from Account 716 to Account 701, Cash, the additional funds whenever it is imperative to expend the funds for operating purposes to avoid the curtailment of transportation service or the filing of a petition in reorganization. In the same order, the Commission adopted special rules of procedure for the handling of petitions to transfer funds. These rules require that:

> any petitions for relief or other pleadings filed in this matter shall be served upon all parties, and the parties shall be afforded an opportunity to file representations in response thereto within 10 days from the date of service, prior to which time action will not be taken on any proposed transfer except in the case of an extreme emergency.

Apparently, therefore, Division 2 has authority (1) to waive the substantive requirements of the prior orders

upon a proper showing that the proposed transfer is imperatively required, and (2) to waive the special rules of procedure in the case of an extreme emergency.

Petitioner has failed to serve its petition upon all parties to this proceeding despite the clear notice that service was required. Because of this, potential opposition has been the denied the right, guaranteed by the Commission's prior order, to file representations in reply to the petition. No extreme emergency is alleged by petitioner or found to exist by the majority. It is my view that action by the Division on this petition in the circumstances is ultra vires. My dissent for procedural reasons, however, should not be construed as a judgment on the merits.

[Service Date, Jan. 23, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 22nd day of January, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, the petitions of the Bessemer and Lake Erie Railroad Company and The Lake Terminal Railroad Company dated November 26, 1974, and of the reply thereto filed January 7, 1975, by the National Industrial Traffic League;

It appearing, That the order dated October 3, 1974, provided in part that any railroad respondents unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission, Division 2;

It further appearing, That, pursuant to that order, petitioners submit that they have no delayed capital expenditures or deferred maintenance, as defined; that Bessemer and Lake Erie Railroad Company seeks permission to use funds generated by the Ex Parte No. 305 increase to contribute to its purchase of three locomotives and 846 hopper and gondola cars; and that The Lake Terminal Railroad Company seeks to use those funds to contribute to the purchase of 50 gondolas and two Euclid trucks;

It further appearing, That, in reply, the National Industrial Traffic League completely supports the Commission's objective herein, that is, the improvement of the nation's transportation system, and urges careful examination of the petitions such as those under consideration herein, to ensure this objective;

It further appearing, That Commission analysis of the petitions and of petitioner's initial and quarterly filings submitted pursuant to the orders in this proceeding shows that (1) petitioner Bessemer and Lake Erie Railroad Company has no deferred maintenance of roadway, and, that while its bad order ratio has increased from approximately 4 percent to 7.3 percent as of October 1, 1974, the proposed purchase of cars and locomotives would increase its fleet by 10 percent, and, consequently, would reduce this bad order ratio, and, perhaps, reduce the necessity of making heavy repairs on old equipment; and that petitioner's cash and short-term investment position is strong; and (2) petitioner The Lake Terminal Railroad Company has no slow order track and no deferred maintenance or delayed capital improvements;

And it further appearing, That petitioners have complied with the procedural requirements set forth in the above-cited orders; that the petitions meet the criteria established by the Commission for approval of the requested deviation from the requirements which condition the increase in rates in this proceeding; and that the proposed expenditures will further the development of an improved transportation network;

It is ordered, That the petitions of the Bessemer and Lake Erie Railroad Company and The Lake Terminal Railroad Company be, and they are hereby, granted, and that petitioners be, and they are hereby, permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase.

This permission is conditioned upon carrier use of the revenue as proposed and will be monitored through the Commission's audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Feb. 6, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 5th day of February, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, December 17, 1974, and January 22, 1975, the petitions filed on December 23, 1974, December 24, 1974, and December 26, 1974, by (1) Birmingham Southern Railroad Company; (2) Carbon County Railway Company; (3) Duluth, Missabe and Iron Range Railway Company; (4) Elgin, Joliet and Eastern Railway Company; (5) McKeesport Connecting Railroad (6) Union Railroad Company; and (7) The Youngstown and Northern Railroad Company; and the reply thereto filed January 7, 1975, by The National Industrial Traffic League;

It appearing, That the order dated October 3, 1974, provided in part that any railroad respondents unable to use the full amount of the funds generated by the Ex Parte No. 305 increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2;

It further appearing, That pursuant to said order, petitioners, rail carriers owned by United States Steel Corporation, seek to use the funds generated by this increase to contribute towards: (1) the purchase of additional new or used locomotives and cars; (2) the repair of existing equipment; (3) the construction of new facilities; and (4) roadway improvements.

It further appearing, That, in reply, the National Industrial Traffic League supports the Commission's objective herein—the improvement of the nation's transportation system—and urges careful examination of the petitions to ensure this objective;

It further appearing, That Commission analysis of the petitions and the initial and quarterly filings submitted pursuant to our orders in this proceeding shows that the relief sought by these financially-sound carriers is warranted;

And it further appearing, That petitioners have complied with the procedural requirements set forth in the above-cited orders, that the petitions meet the criteria established by the Commission for approval thereof, and that the proposed expenditures will further the development of an improved transportation network;

Wherefore:

It is ordered, That the petitions be, and they are hereby, granted, and that petitioners be, and they are hereby, permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase.

This permission is conditioned upon carrier use of the revenue as proposed and will be monitored through the Commission's audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Mar. 4, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 28th day of February, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, the petition of the Chicago, Rock Island and Pacific Railroad Company, filed January 22, 1975, and the reply thereto filed January 30, 1975, by the National Industrial Traffic League;

It appearing, That the order dated October 3, 1974 provided, in part, that any railroad not in reorganization which finds it imperative to expend funds generated by the Ex Parte No. 305 increase for operating purposes to avoid curtailment of transportation service or to avoid the filing of a petition in reorganization may make application to the Commission, Division 2, for approval of the transfer of Ex Parte No. 305 funds from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, said request to be accompanied by supporting financial and statistical information;

It further appearing, That petitioner has complied with the requirements set forth in the above-cited orders; that while petitioner has used a large portion of the Ex Parte No. 305 revenues in the manner intended by the Commission, it can no longer continue to do so as a result of an extremely poor cash position, working capital position, and operating deficit, and seeks to transfer from Account 716 to Account 701(1) the remainder of unused funds generated during the period June 20, 1974 to December 31, 1974, and (2) the funds generated

by the increase during the period December 31, 1974 through June 30, 1975;

And it further appearing, That without relief from pressing short-term operating difficulties, there can be no resolution of the longer-term problem of plant deterioration to which this proceeding is addressed; and that continued segregation of the funds herein could lead to disruption of service contrary to the public interest;

Wherefore, and for good cause:

It is ordered, That, consistent with the views expressed by The National Industrial Traffic League, and after careful consideration and analysis of the issues and evidence presented, the petition be, and it is hereby, granted, and that petitioner be, and it is hereby, permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase;

And it is further ordered, That, in accordance with petitioner's request the relief granted in the first ordering paragraph be, and it is hereby limited to the periods June 20, 1974 to December 31, 1974, and December 31, 1974 to June 30, 1975, as previously described.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Mar. 7, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 5th day of March, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT ON FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, and the petition of the Soo Line Railroad Company filed December 29, 1974;

It appearing, That the order dated October 3, 1974, provided in part that any railroad respondents unable to use the full amount of the funds generated by the Ex Parte No. 305 increase for deferred maintenance or delayed capital improvements as defined by the Commission, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2;

It further appearing, That, pursuant to that order, Soo Line Railroad Company requests that it be permitted to use Ex Parte No. 305 funds generated in 1974 and 1975 for: (1) annual capital expenditures made in 1974 and 1975 in excess of average annual capital expenditures for the years 1971-1973 (after adjustment of such average by elimination of extraordinary expenditures made in 1973); and (2) expenditures charged to operating expenses in 1974 and 1975 for track improvement programs in excess of average annual track improvement programs for the years 1971-1973 on the grounds that petitioner has no deferred maintenance or delay capital improvements;

It further appearing, That thorough analysis of the financial data submitted by petitioner in its quarterly

report filed pursuant to Commission order in this proceeding and study of petitioner's operations warrants a finding that, contrary to its contentions, petitioner has deferred maintenance of cross ties and rail; and that petitioner's request to use these funds to meet its budgeted capital improvement programs is not in conformity with the Commission's intention in this proceeding;

Wherefore, and for good cause:

It is ordered, That the petition be, and it is hereby, denied.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Mar. 7, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 5th day of March, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, and the letter-requests filed November 12, 1975, January 3, 1975, and February 12, 1975, by the Chattahoochee Industrial Railroad, a Class II carrier operating over 15 miles of track in Georgia;

It appearing, That the order dated October 3, 1974 provided, in part, that any railroad respondent unable to use the full amount of the funds generated by the Ex Parte No. 305 increased for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2;

It further appearing, That petitioner seeks to apply the proceeds of the increase to current capital projects, specifically to the purchase of 150 one hundred ton open-top hopper cars and the expansion of existing repair facilities, on the grounds that it has no deferred maintenance or delayed capital improvements;

It further appearing, That petitioner erroneously served its request parties to Ex Parte No. 310 rather than Ex Parte No. 305 as required by the Commission's order; but that petitioner is 99.56 percent owned by the Great Northern Nekoosa Corporation, and over 90 percent of its revenues are derived from the shipment of this company's products on its 15-mile line and, there-

fore, that parties in this proceeding would appear to have no interest or objection, providing the substantive portions of the orders of the Commission are met;

And it further appearing, That Commission analysis of the petition shows that this carrier is financially sound, that it has resources adequate to maintain its property, and there is no evidence of deferred maintenance or delayed capital improvements; accordingly, the relief sought is warranted as the proposed expenditures will further the development of an improved transportation network;

Wherefore:

It is ordered, That the petition be, and it is hereby, granted, and that petitioner be, and it is hereby, permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase. If no objection is made, this order will become final 30 days from the date of service of this order.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Mar. 7, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 5th day of March, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated August 12, 1974, October 3, 1974, and December 17, 1974, and the letter-requests of the Durham and Southern Railway Company dated October 31, 1974, and January 20, 1975;

It appearing, That the order dated October 3, 1974, provided in part that any railroad not in reorganization which finds it imperative to expend funds generated by the Ex Parte No. 305 increase for operating purposes to avoid curtailment of transportation service or to avoid the filing of a petition in reorganization may make application to the Commission, Division 2, for approval of the transfer of Ex Parte No. 305 funds from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, said request to be accompanied by supporting financial statistical information;

It further appearing, That petitioner seeks to be relieved of accounting for these funds in Account 716, while maintaining the underlying records, on the ground that its revenue is down 6.6 percent, its net income is down 146.4 percent, and its car loading is down 19.6 percent;

And it further appearing, That Commission analysis of the evidence presented and the issues herein show that petitioner is a financially healthy rail carrier in no danger of bankruptcy or curtailment of transportation service; and that its situation does not warrant exemption from the accounting and other requirements set forth in this proceeding;

Wherefore, and for good cause:

It is ordered, That the request be, and it is hereby, denied for the reason that sufficient cause has not been shown to warrant granting the action sought.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Mar. 20, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 18th day of March 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, the petition of the Detroit, Toledo and Ironton Railway Company filed December 16, 1974, and the reply thereto filed December 31, 1974, by the National Industrial Traffic League;

It appearing, That the order dated October 3, 1974 provided, in part, that any railroad not in reorganization which finds it imperative to expend funds generated by the Ex Parte No. 305 increase for operating purposes to avoid curtailment of transportation service or to avoid the filing of a petition in reorganization may make application to the Commission, Division, 2 for approval of the transfer to Ex Parte No. 305 funds from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, said request to be accompanied by supporting financial and statistical information;

It further appearing, That petitioner seeks to use Ex Parte No. 305 funds for operating expenses to avoid curtailment of service and alleges that such action is necessary due to the substantial decrease in earning capacity caused by current economic conditions, particularly in the automotive industry;

It further appearing, That although petitioner's earnings improved in 1974, increasing from $277,000 in 1973 to $1.2 million in 1974, it is asserted that the increase

was primarily due to reduction in capital expenditures necessitated by the recession;

And it further appearing, That careful consideration and analysis of the evidence presented in light of the issues and purposes of this proceeding convinces us that a grant of the petition is not warranted at this time in that there is an insufficient showing that Ex Parte No. 305 funds are necessary to prevent curtailment of service or the filing of a petition in bankruptcy.

Wherefore, and for good cause:

It is ordered, That the petition to transfer funds from Account 716 to Account 701 be, and it is hereby, denied without prejudice to the filing of a request for relief at a later date should petitioner deem such action warranted.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Mar. 21, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 19th day of March, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, the petition of the Chicago South Shore and South Bend Railroad filed February 24, 1975, and the reply thereto filed March 4, 1975, by the National Industrial Traffic League;

It appearing, That the order dated October 3, 1974 provided, in part, that any railroad respondent unable to use the full amount of the funds generated by the Ex Parte No. 305 increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission, Division 2;

It further appearing, That petitioner seeks to apply the proceeds of the increase to current capital projects, specifically to the purchase of certain new equipment, on the grounds that it has no deferred maintenance or delayed capital improvements;

And it further appearing, That Commission analysis of the petition shows that this carrier is financially sound, and there is no evidence of deferred maintenance or delayed capital improvements; accordingly, the relief sought is warranted since the proposed expenditures will further the development of an improved transportation network;

Wherefore, and for good cause:

It is ordered, That the petition be, and it is hereby granted, and that petitioner be, and it is hereby permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, those funds generated from the Ex Parte No. 305 increase necessary to complete the proposed purchases.

This permission is conditioned upon carrier use of the revenue as proposed and will be monitored through the Commission's audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Mar. 21, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 19th day of March, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, the petition filed February 26, 1975, by the Newburgh and South Shore Railway Company, and the reply thereto filed March 4, 1975, by the National Industrial Traffic League;

It appearing, That the order dated October 3, 1974, provided, in part, that any railroad respondents unable to use the full amount of the funds generated by the Ex Parte No. 305 increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2;

It further appearing, That pursuant to said order, petitioner rail carrier, controlled by United States Steel Corporation, seeks to use the funds generated to date, from this increase towards the purchase of two new locomotives;

It further appearing, That, in reply, the National Industrial Traffic League supports the Commission's objective herein—the improvement of the nation's transportation system—and urges careful examination of the petition to ensure this objective;

It further appearing, That Commission analysis of the petition and study of petitioner's financial position shows that the relief sought by this financially sound carrier is warranted, and meets the criteria established in prior orders in this proceeding;

Wherefore:

It is ordered, That the petition be, and it is hereby, granted, and that petitioner be, and it is hereby, permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase.

This permission is conditioned upon carrier use of the revenue as proposed and will be monitored through the Commissions audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Apr. 23, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 17th day of April 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated August 12, 1974, October 3, 1974, and December 17, 1974, and the petition of the Utah Railway Company, filed March 26, 1975;

It appearing, That the order dated October 3, 1974, provided in part that any railroad not in reorganization which finds it imperative to expend funds generated by the Ex Parte No. 305 increase for operating purposes to avoid curtailment of transportation service or to avoid the filing of a petition in reorganization may make application to the Commission, Division 2, for approval of the transfer of Ex Parte No. 305 funds from Account No. 716, Capital and Other Reserve Funds, to Account 701, Cash, said request to be accompanied by supporting financial and statistical information;

It further appearing, That petitioner seeks permission to use those funds generated by the increase for operating purposes on the grounds that it has experienced a net income loss of $53,762.72 for the first two months of 1975, and that these losses are expected to continue;

And it further appearing, That Commission analysis of the evidence presented and the issues herein show that petitioner is a financially sound rail carrier, in no present danger of bankruptcy or curtailment of transportation service; and that the evidence presented is not sufficient to warrant the action sought at this time;

Wherefore, and for good cause:

It is ordered, That the petition be, and it is hereby, denied.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Apr. 29, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 25th day of April, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated August 9, 1974, July 18, 1974, and October 3, 1974 the petition filed March 27, 1975, by the Sandersville Railroad Company, and the reply filed by the National Industrial Traffic League on April 8, 1975;

It appearing, That the order dated October 3, 1974, provided in part that any railroad respondents unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission, Division 2;

It further appearing, That pursuant to that order, petitioner submits it has no delayed capital improvements or deferred maintenance, as defined, and seeks to use the funds generated by the increase (1) to contribute to a new maintenance building and the replacement and upgrading of four miles of track at a cost of $675,000; (2) towards future capital improvements, not specified; and/or (3) to replace general funds expended for the above or any future capital improvement projects;

It further appearing, That Commission approval of requests to use Ex Parte No. 305 funds for capital improvement projects will not be granted based on general allegations regarding future programs or general corporate needs but must be based on a sufficient showing of specific, new and additional capital improvement projects;

It further appearing, That Commission investigation shows that petitioner has failed to segregate the Ex Parte No. 305 funds in Account 716, Capital and Other Reserve Funds, as required in our orders in this proceeding, and has placed such funds directly into Account 701, Cash, in violation of our accounting orders herein;

And it further appearing, That Commission analysis of the petition and petitioner's financial position shows that this carrier has no deferred maintenance or delayed capital improvements, as supported by evidence of no slow orders and a bad order ratio of 1.6 percent; and that carrier use of the revenue towards the two specified improvement projects described in the first It further appearing paragraph herein will further the development of an improved transportation network, thereby meeting the criteria established by the Commission for approval of the requested relief, but that petitioner's remaining requests regarding application of the funds to "general corporate purposes" do not conform thereto;

Wherefore:

It is ordered, That the petition of the Sandersville Railroad Company be, and it is hereby granted in part, and that petitioner be, and it is hereby permitted to use the funds of the Ex Parte No. 305 increase to contribute towards its plans for a new maintenance building and upgrade and replacement of four miles of track, as specified in its petition, and that the petition be, and it is hereby, denied in all other respects.

This permission is conditioned upon carrier use of the revenue as provided herein and segregation of the Ex Parte No. 305 funds as required in this proceeding. Carrier compliance with these requirements will be monitored through the Commission's audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Apr. 29, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 25th day of April 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, the petition filed February 27, 1975, by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and the replies thereto filed March 10, 1975 by the Pacific Northwest Traffic League, March 11, 1975 by the National Industrial Traffic League, and March 24, 1975 by General Mills;

It appearing, That the order dated October 3, 1974, provided in part that any railroad not in reorganization which finds it imperative to expend funds generated by the Ex Parte No. 305 increase for operating purposes to avoid curtailment of transportation service or to avoid the filing of a petition in reorganization may make application to the Commission, Division 2, for approval of the transfer of Ex Parte 305 funds from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, said request to be accompanied by supporting financial and statistical information;

It further appearing, That petitioner seeks to use these funds for general operating purposes and requests permission to transfer from Account 716 to Account 701: (1) $1,301,000 of unspent funds generated by this increase during 1974 presently in Account 716; and (2) funds generated from the increase during the period January 1, 1975-June 30, 1975; and financial evidence submitted shows that while petitioner has spent $4,925,000 generated by the Ex Parte No. 305 increase for de-

ferred maintenance, as intended by the Commission, it is no longer able to do so but must use the funds to alleviate its continually declining financial position;

It further appearing, That in reply, Pacific Northwest Traffic League and General Mills support the requested relief considering the poor financial condition of the carrier; but that the National Industrial Traffic League opposes the relief because in its view petitioner has not justified the relief sought;

And it further appearing, That Commission analysis of the evidence presented and the issues herein shows: (1) that deficit operations due largely to depressed traffic levels have seriously damaged petitioner's cash position, with its cash balance on April 4, 1975, at $2.5 million; (2) that increased labor costs resulting from new labor agreements will exacerbate petitioner's cash difficulties; (3) that without a substantial recovery in traffic levels, this carrier may experience a financial crisis within the near future; and (4) that approval of the request, subject to certain conditions, should provide petitioner with sufficient funds to avert such a crisis;

Wherefore:

It is ordered, That, consistent with our goals in this proceeding, the petition be, and it is hereby granted, and that petitioner may transfer from Account 716, Capital and Other Reserve Funds to Account 701, Cash, the Ex Parte No. 305 funds specified for the requested period, subject to the following conditions:

1. All Ex Parte No. 305 funds transferred from Account 716 to Account 701 to be used for general operating purposes should be considered a "borrowing" of those funds to be repaid by the carrier when its financial condition warrants. The Commission, based on a continual evaluation of the carrier's financial condition, will determine when such funds should again be segregated for correction of maintenance deficiencies, and when the funds previously transferred should be repaid. To make these determinations, the Commission is hereby requiring petitioner

to submit the following monthly reports—an income statement, balance sheet, a statement of changes in financial condition, and a statement of cash flow.

2. The petitioner is hereby prohibited from transferring any assets to its parent company, Milwaukee Corporation, or to any other affiliated or subsidiary company, without prior approval of the Commission, until all borrowed funds are repaid into Account 716. This permission is conditioned upon carrier fulfillment of the above conditions and carrier compliance will be monitored by the Commission.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date May 2, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 29th day of April 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of October 3, 1974 and December 17, 1974, and the letter-request filed April 9, 1975, by The Arcata and Mad River Rail Road Company;

It appearing, That the order dated October 3, 1975, provided in part:

> That any railroad not in reorganization which finds it imperative to expend the funds generated by the authorized increase for operating purposes to avoid curtailment of transportation service or to avoid the filing of a petition in reorganization may make application to the Commission, Division 2, for approval of the proposed transfer and use of such funds said application to be accompanied by supporting financial and statistical information and a certification that the funds are necessary for the purposes aforesaid; and
>
> That railroad respondents, if any, which are unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined in this proceeding, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission, Division 2 . . . ;

It further appearing, That by letter-request, petitioner seeks to transfer the $9,742.06 it presently holds in Account 716, Capital and Other Reserve Funds, along with all future revenues to be generated by the Ex Parte No. 305 increase to Account 701, Cash, on the grounds that the railroad operates on a "pay-as-you-go-plan, does not have any deferred maintenance and is financially sound and capable of paying its operating and maintenance expenses," but that petitioner failed to serve all parties to this proceeding with its request in violation of our order of December 17, 1975;

And it further appearing, That petitioner is a financially sound carrier in no danger of curtailment of transportation service or the filing of a petition in reorganization, that petitioner has submitted no proof for its claim that it has no deferred maintenance for delayed capital improvements; that data on file with this Commission is insufficient to support findings of no deferred maintenance or delayed capital improvements; that petitioner has failed to submit for approval specific projects for which the Ex Parte No. 305 revenue would be applied; and that, in conformity with our prior orders herein, such evidence is necessary for approval of the request;

Wherefore:

It is ordered, That the request be, and it is hereby denied, without prejudice to its refiling based on our findings herein.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date May 2, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 29th day of April 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, and the petition filed April 9, 1975 by the Richmond, Fredericksburg and Potomac Railroad Company;

It appearing, That the order dated October 3, 1974, provided in part that any railroad respondent unable to use the full amount of the funds generated by the Ex Parte No. 305 increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2;

It further appearing, That, pursuant to said order, petitioner seeks to use the funds generated by this increase as of March 1, 1975, totaling approximately $625,000, towards the purchase of 50 high side gondola cars of 100 ton capacity; and that in support of its request states it has no delayed capital expenditures or deferred maintenance, has no slow orders on its track and has a bad order ratio of only .09%;

And it further appearing, That Commission analysis of the petitions and financial data on file with us shows the carrier to be financially sound, with its property in good condition; that petitioner has complied with the requirements set forth by the Commission for approval of the request; and that the proposed expenditure will further the development of an improved transportation network;

Wherefore:

It is ordered, That the petition be, and it is hereby, granted, and that petitioner be, and it is hereby, permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase.

This permission is conditioned upon carrier use of the revenue as proposed and will be monitored through the Commission's audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Jun. 2, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 27th day of May, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled including the orders of the Commission dated October 3, 1974, December 17, 1974, and March 5, 1975, and the letter-request for further consideration filed April 24, 1975, by the Durham and Southern Railway Company;

It appearing, That the order of March 5, 1975, found that petitioner's financial position did not warrant the action sought since it was not shown that the Ex Parte No. 305 funds were necessary to prevent a curtailment of service or the filing of a petition in bankruptcy;

It further appearing, That the additional data submitted by petitioner demonstrates its declining revenue and carloadings; but that Commission analysis thereof and of the data contained in the carrier's annual report shows that it remains a financially sound carrier;

Wherefore and for good cause:

It is ordered, That the request to transfer funds from Account 716 to Account 701 be, and it is hereby denied, for the reason that sufficient cause has not been shown to warrant granting the action sought at this time.

By the Commission, Division 2.

JOSEPH M. HARRINGTON
Acting Secretary

[SEAL]

[Service Date Jun. 5, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 2nd day of June, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, and the request of the Ogdensburg Bridge and Port Authority to use the Ex Parte No. 305 funds for operating purposes:

It appearing, That the order dated October 3, 1974, provided in part that any railroad not in reorganization which finds it imperative to expend funds generated by the Ex Parte No. 305 general increase for operating purposes to avoid curtailment of transportation service or to avoid the filing of a petition in reorganization may make application to the Commission, Division 2, for approval of the transfer of Ex Parte No. 305 funds from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, said request to be accompanied by supporting financial and statistical information;

It further appearing, That petitioner presently operates 47 miles of track in New York State, as part of its total operations; that the data submitted by petitioner in support of the request relates to all of petitioner's operations, and that while petitioner estimates accrual of $8,000 as a result of the Ex Parte No. 305 increase in the twelve months ending March 30, 1976, it fails to indicate the disposition and amount of revenue accrued from June 1974 to March 1975;

It further appearing, That in support of its request, petitioner states that over a four year period of operation, the Ogdensburg Bridge and Port Authority Rail-

road has experienced a cumulative deficit of approximately $115,500, which figure is equal to its combined expenses for road-bed rehabilitation, maintenance, and bridge structure reconstruction; that it has attempted through various procedures to remove this deficit, but has been unable to do so; and that it forecasts a cumulative loss of $23,758 for fiscal 1975;

It further appearing, That petitioner fails to provide sufficient information regarding its deferred maintenance and delayed capital improvements, and that, based on the information submitted, it would appear that petitioner has considerable deferred maintenance and delayed capital improvements;

It further appearing, That petitioner has failed to serve all parties to this proceeding with its request in violation of our order of December 17, 1975;

And it further appearing, That the information before us indicates petitioner to be in a basically strong financial position, in no danger of curtailment of service or bankruptcy, and that there exists a strong need to reduce deferred maintenance, especially that accruing on its locomotives, and, therefore, that its situation does not warrant exemption from the accounting and other requirements set forth in this proceeding.

Wherefore, and for good cause:

It is ordered, That the request be, and it is hereby, denied, for the reason that sufficient cause has not been shown to warrant granting the action sought.

By the Commission, Division 2.

JOSEPH M. HARRINGTON
Acting Secretary

[SEAL]

[Service Date Jun. 6, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 4th day of June, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, December 17, 1974, and March 18, 1975, and the petition of the Detroit, Toledo, and Ironton Railway Company dated April 30, 1975;

It appearing, That the order dated March 18, 1975, denied petitioner's request to transfer funds generated from the Ex Parte No. 305 increase from Account 716, Capital and Other Reserve Funds, to Account 701, Cash for use as operating expenses, since at that time, petitioner's financial situation did not warrant the action sought;

It further appearing, That by petition dated April 30, 1975, this rail carrier seeks reconsideration of that order on the ground that its financial position has deteriorated to such a degree so as to require the use of Ex Parte No. 305 funds to continue its operations as a common carrier, and requests it be permitted to transfer $1,916,906.60 from Account 716 to Account 701 for use for operating purposes;

It further appearing, That by reply filed May 20, 1975, the National Industrial Traffic League opposes the request insofar as it seeks to use the Ex Parte 305 funds for several cash purposes;

And it further appearing, That analysis of the evidence presented by petitioner and of financial data on file with the Commission indicates that the financial position of this carrier is precarious; that its cash position and traffic volume has been declining significantly, that a large loss has been reported for the first quarter

of this year; and a larger loss is predicted for the second quarter, that as of May 16, 1975, petitioner had a negative cash position of over $1.9 million; that should the requested relief not be granted petitioner could experience a financial crisis in the near future leading to curtailment of transportation service; and that approval of the request subject to certain conditions should provide petitioner with sufficient funds to avert such a crisis;

Wherefore, and for good cause:

It is ordered, That the petition for reconsideration be, and it is hereby, granted, and that petitioner, until further order of the Commission, may transfer from Account 716 Capital and Other Reserve Funds, to Account 701, Cash, Ex Parte No. 305 funds subject to the following conditions:

1. All Ex Parte 305 funds transferred from Account 716 to Account 701 to be used for general operation purposes should be considered a "borrowing" of those funds to be repaid by the carrier when and if its financial condition so warrants. In order that the Commission may properly evaluate the carrier's financial condition, petitioner should submit the following monthly reports—an income statement, balance sheet, a statement of changes in financial condition, and a statement of cash flow.
2. The petitioner is hereby prohibited from transferring any assets to its parent company, or to any other affiliated or subsidiary company, without prior approval of the Commission, until all borrowed funds are repaid into Account 716.

This permission is conditioned upon carrier fulfillment of the above conditions and carrier compliance will be monitored by the Commission.

By the Commission, Division 2.

JOSEPH M. HARRINGTON
Acting Secretary

[SEAL]

[Service Date Jul. 15, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 11th day of July, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, the petition filed June 10, 1975 by the Providence and Worcester Company; and the reply thereto filed June 18, 1975 by the National Industrial Traffic League;

It appearing, That the order dated October 3, 1974, provided in part that any railroad respondents unable to use the full amount of the funds generated by the Ex Parte No. 305 increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2;

It further appearing, That pursuant to said order, petitioner, a Class II rail carrier operating approximately 50 miles of track in Massachusetts and Rhode Island with 1974 revenue of $2.9 million, seeks to use the funds generated by this increase towards a program of track clearance expansion designed to allow institution of "piggyback" service over its lines, at an approximate cost of $100,000; and that in support of the requested relief, states that it has no deferred maintenance or delayed capital improvements, as defined by the Commission, that it has no slow orders on its track, has no freight car bad orders as it owns no cars, and that its cash and short term debt position is strong;

It further appearing, That, in reply, the National Industrial Traffic League urges Commission scrutiny of the requests to ensure fulfillment of the goals of this proceeding;

And it further appearing, That Commission analysis of the petition and other financial data on file shows that the relief sought by this financially sound carrier is warranted; that petitioner has complied with the criteria set forth in the orders in this proceeding and that the proposed expenditures will further the development of an improved transportation netowrk;

Wherefore:

It is ordered, That the petition be, and it is hereby granted, and that petitioner be and it is hereby permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase to be used as designated herein.

This permission is conditioned upon carrier use of the revenue as proposed, and will be monitored through the Commission's audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Jul. 15, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 14th day of July, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, and the letter-requests filed April 21, 1975, May 10, 1975, and May 23, 1975, by the Ashley, Drew & Northern Railway Company; and the reply of the National Industrial Traffic League filed June 16, 1975;

It appearing, That the order dated October 3, 1974, provided in part that any railroad respondents unable to use the full amount of the funds generated by the Ex Parte No. 305 increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2;

It further appearing, That pursuant to said order, petitioner rail carrier, solely owned by the Georgia-Pacific Corporation, seeks permission to use funds generated by the Ex Parte No. 305 increase towards the purchase of 5 gondola cars (as a cost of $130,000), the upgrading of 15 woodchip cars (at a cost of $45,000), and the restoration of culverts and shoulders (at a cost of $75,-000);

It further appearing, That Commission analysis of the request and the carrier's annual reports show the carrier to be in good financial condition; that petitioner has complied with the procedural requirements set forth in the above-cited orders; that the requests meet the criteria

established by the Commission for approval thereof; and that the proposed expenditures will further the development of an improved transportation network, consistent with the views expressed by the National Industrial Traffic League;

Wherefore:

It is ordered, That the requests be, and they are hereby granted, and that petitioner be, and it is hereby, permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, funds generated as a result of the Ex Parte No. 305 general increase for the purposes above set forth.

This permission is conditioned upon carrier use of the revenue as proposed and will be monitored through the Commission's audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Jul. 29, 1975]

ORDER

At a Session of the Interstate Commerce Commission, Division 2, acting as an Appellate Division, held at its offices in Washington, D.C., on the 22nd day of July 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

It appearing, That by petition filed December 29, 1974, Soo Line Railroad Company requested permission to use Ex Parte No. 305 funds generated in 1974 and 1975 for (1) annual capital expenditures made in those years in excess of average annual capital expenditures for the years 1971-1973 (after adjustment of such average by elimination of extraordinary expenditures made in 1973); and (2) expenditures charged to operating expenses in 1974 and 1975 for its track improvement programs in excess of average annual track improvement programs for the years 1971-1973;

It further appearing, That by order served March 7, 1975, the Commission denied the request on the grounds that petitioner had deferred maintenance of cross ties and rail and that the request to use funds in place of its budgeted capital improvement programs was not in conformity with the Commission's intention in this proceeding;

It further appearing, That on March 28, 1975, Soo Line filed a petition for reconsideration of said order on the grounds that its unique situation warrants individual consideration; that capital and maintenance expenditures have been at levels consistent with the volume and service requirements of its traffic, especially in view of the large portion of low density track over which it operates, since it is not economically feasible to maintain this high percentage of low density lines at stand-

ards equivalent to its main lines, but that it has consistently provided service designed to meet the changing needs of all its shippers; that its consistently large budget and expenditures for capital improvements and maintenance in recent years have the effect of penalizing the Soo Line, as the order of July 18, 1974, in this proceeding prohibits use of Ex Parte No. 305 funds for new improvements unless expenditures exceed budgeted amounts for the 3rd and 4th calendar quarters of 1974 and the 1st and 2nd calendar quarters of 1975:

It further appearing, That by petition filed April 15, 1975, the National Industrial Traffic League requests the Commission subject the request to extreme scrutiny to assure achievement of the goals set forth in this proceeding.

It further appearing, That the petitioner has submitted additional data to support its request to mitigate the conditions for use of the revenues generated by the increase; that certain of this data shows a greater than average increase in its level of spending for both maintenance improvement programs and capital expenditures, including a substantial track improvement program with increasing expenditures for rail, ballast, and ties; and that, while petitioner continues to argue that it does not have deferred maintenance or delayed capital improvements within the definitions of this proceeding, it realizes it does have a need to upgrade its track structure primarily in response to shifting traffic patterns;

It further appearing, That the modification proposed by the petitioner for its use of the Ex Parte 305 funds, related to the increased level of maintenance and capital spending by the Soo Line in recent years, are in conformity with the Commission's intentions in this proceeding to improve service to shippers nationwide; that the standards imposed by the Commission in its July 18, 1974 order were applicable to railroads in general and were not intended to defer trackage improvement programs or to curtail other capital expenditures for roadway programs undertaken by individual roads at spending levels consistent with the unique considerations

of the particular rail carriers; that the Commission expected that the increase authorized in Ex Parte No. 305 would enable the railroads to spend substantially more for maintenance and capital improvements than in recent years; and that while we are not convinced that the Soo Line has no deferred maintenance or delayed capital improvements, our previous analysis in this regard failed to take into account the different maintenance levels appropriate for low density seasonal lines as opposed to main line tracks;

And it further appearing, That Commission reassessment of petitioner's situation in light of the purposes of this proceeding and the evidence submitted warrants the conclusion that the requested relief be granted restricted to the conditions set forth herein; that the petitioner's past trackage improvement expenditures and budgeted capital expenditures for roadway programs are commendable and demonstrate a sincere effort on the part of management to increase the efficiency of its facilities and provide the service necessary to meet the needs of its shippers; that petitioner should not be denied use of the Ex Parte No. 305 funds to the extent they are applied to trackage improvement and capital expenditures for roadway programs during the periods set forth below; that granting such relief based on the extenuating circumstances cited by the petitioner is consistent with the primary objectives of the Ex Parte 305 general increase in dedicating a portion of the revenues generated by the increase to trackage improvement programs to the end of improving the nation's rail transportation system.

Wherefore:

It is ordered, That the petition for reconsideration of the order dated March 5, 1975, be, and it is hereby, granted in part;

It is further ordered, That the computation base set forth in paragraph 5 of our July 18, 1974 order be modified as to petitioner's operations to reflect the base period for computing the amount of funds authorized to be expended from Account 716 as 1971-1973, in place of

the base period of the 3rd and 4th quarters of 1974 and 1st and 2nd quarters of 1975;

It is further ordered, That such funds accumulated in Account 716 can be used to the extent that:

(1) any funds expended for trackage improvement programs, roadway and equipment in the third and fourth quarters of 1974 and to be expended in 1975, exceed the average annual expenditures for such improvements for the base period 1971-1973;

And it is further ordered, That a detailed statement explaining the use of those funds disbursed from Account 716 be attached to the appropriate schedules of the quarterly report required by the Commission's July 18, 1974 order.

The carrier's use of these revenues will also be monitored through the Commission's audit procedures.

By the Commission, Division 2, acting as an Appellate Division.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Aug. 5, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 4th day of August 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

Upon consideration of the record in the above-entitled proceeding, including the orders of the Commission dated October 3, 1974, and December 17, 1974, and the petitions of the Cuyahoga Valley Railway Company, the Monongahela Connecting Railroad Company, and the Aliquippa and Southern Railroad Company, filed June 30, 1975;

It appearing, That the order dated October 3, 1974, provided in part that any railroad respondents unable to use the full amount of the funds generated by the Ex Parte No. 305 increase for deferred maintenance or delayed capital improvements, as defined by the Commission, may expend such funds for new and additional capital improvements, providing advance approval is obtained from the Commission, Division 2;

It further appearing, That petitioners, wholly owned by Jones & Laughlin Steel Corporation, seek to use the Ex Parte No. 305 funds for the following capital improvements:

Cuyahoga Valley	acquisition of 20 gondola cars, and construction and equipping of a car repair building at a cost of $375,000.
Monongahela	acquisition of 2 locomotives at a cost of $551,000
Aliquippa and Southern	acquisition of 50 gondola cars and 35 hopper cars at a cost of $800,000.

It further appearing, That in support of the requested relief, petitioners state they have no deferred maintenance or delayed capital improvements;

And it further appearing, That Commission analysis of the petitions and of other available financial data shows petitioners to be financially healthy and that the relief requested is warranted and will contribute to development of an improved national transportation network;

Wherefore:

It is ordered, That the petitions be, and they are hereby, granted, and that petitioners be, and they are hereby, permitted to transfer from Account 716, Capital and Other Reserve Funds, to Account 701 Cash, funds generated as a result of the Ex Parte No. 305 general increase.

This permission is conditioned upon carrier use of the revenue as proposed and will be monitored through the Commission's audit procedures.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Sep. 25, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 19th day of September 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

It appearing, That by order served December 18, 1974, the Grand Trunk Western Railroad Company was permitted, for a period of six months, to transfer all Ex Parte No. 305 funds from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, which funds were found necessary to meet operating expenses and prevent possible service curtailment;

It further appearing, That by order served June 12, 1975, the June 30, 1975 expiration date of the Ex Parte No. 305 increase was extended to April 30, 1976, unless otherwise ordered;

It further appearing, That the Grand Trunk Western, by petition filed July 7, 1975, seeks extension of the previously-granted relief to April 30, 1976, on the grounds that such relief continues to be necessary; that it is experiencing severe cash flow deficits, and that, while it has no deferred maintenance or delayed capital improvements and is now able to meet the needs of its shippers, if the requested relief is not granted, it may be forced to create deferred maintenance or curtail its services;

It further appearing, That by reply, the National Industrial Traffic League does not object to the request, but asks the Commission analyze the proposal carefully in view of the stated purposes of this proceeding;

And it further appearing, That petitioner reported a deficit of $140,000 in the fourth quarter of 1974, a loss of $4.6 million in the first quarter of 1975, and had a

negative cash position of $709,962 on May 31, 1975; and that continuation of the previously-granted relief is warranted and necessary to prevent the possibility of discontinued service;

Wherefore:

It is ordered, That the petition be, and it is hereby, granted, and that the relief granted in the order served December 18, 1974, in this proceeding be, and it is hereby, extended to April 30, 1976.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Nov. 12, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 4th day of November, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

It appearing, That by order dated April 29, 1975, the Arcata and Mad River Rail Road Company was denied permission to transfer funds generated by the Ex Parte No. 305 general increase from Account 716, Capital and Other Reserve Funds, to Account 701, Cash, for the purpose of supplementing its continuous maintenance program without prejudice to resubmitting such request in conformity with the requirements of that order;

It further appearing, That by letter-petition dated September 12, 1975, petitioner renews its request and submits additional evidence in support of the requested relief.

It further appearing, That by reply filed September 24, 1975, the National Industrial Traffic League requests careful Commission consideration of the proposal in view of the stated goals of this proceeding;

And it further appearing, That this carrier operates only ten miles of track, is wholly owned by Simpson Timber Company, and that the great majority of its traffic is lumber transported for the parent company; that Commission analysis shows that the carrier is in excellent financial condition, that little or no deferred maintenance is apparent, and that segregation of the Ex Parte No. 305 funds would serve no useful purpose; and that granting the request will permit the carrier to continue to handle its maintenance program on a current basis, with no deferrals;

Wherefore,

It is ordered, That the petition be, and it is hereby, granted, and that petitioner be, and it is hereby, permitted to transfer Ex Parte No. 305 funds from Account 716 to Account 701 to be used in conformity with its request as stated herein.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

[Service Date Aug. 25, 1975]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 21st day of August, 1975.

EX PARTE NO. 305

NATIONWIDE INCREASE OF TEN PERCENT IN FREIGHT RATES AND CHARGES, 1974

It appearing, That the order dated July 18, 1974, required the Class 1 line-haul railroads participating in this proceeding to file certain revenue, expense, and statistical data on a quarterly basis for 12 months ending June 30, 1975, to provide the Commission with a means for monitoring the revenues derived from the ten percent increase;

It further appearing, That the order dated June 6, 1975, ordered "That the June 30, 1975, expiration date for the Ex Parte No. 305 increase be, and it is hereby, extended so as to expire with April 30, 1976, unless otherwise ordered by the Commission";

It further appearing, That for purposes of this order, delayed capital improvements represent actually planned, specifically identified capital improvements necessary for the provision of adequate or improved transportation service to shippers which had not been undertaken, scheduled, or otherwise committed because funding or financing was not, or projected to be, available through June 30, 1975; that they exclude improvements in progress and those scheduled or otherwise committed and recognized in capital budgets in effect or applicable on June 1, 1974; that these capital improvements are further identified as delayed expenditures which would (1) add to or improve the carriers' plant and/or equipment so as to increase its usefulness, capacity, durability and efficiency, and (2) which are capitalizable in the property accounts

in accordance with the Commission's accounting regulations; and that expenditures for deferred maintenance and delayed capital improvements will be deemed to be expenditures in excess of the maintenance and capital expenditures which would normally be budgeted for the 3rd and 4th calendar quarters of 1975 and the 1st and 2nd quarters of 1976, providing the estimates for those calendar quarters equal or exceed the average level of maintenance and capital expenditures for the period July 1, 1971 through June 30, 1974, inclusive, on a current dollar basis;

And it further appearing, That in order that the Commission may continue its monitoring of these funds, continued quarterly reporting is required;

Wherefore, and for good cause:

It is ordered, That the report forms furnished herewith shall be used by Class I line-haul railroads participating in this proceeding to report the required data for the third calendar quarter of 1975, due on or before November 15, 1975, and that additional report forms will be furnished for the fourth calendar quarter of 1975 and the first and second calendar quarters of 1976, due on or before February 15, 1976, May 15, 1976 and August 15 1976, respectively.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

[SEAL]

QUARTERLY REPORT—EX PARTE NO. 305

INSTRUCTIONS

1. Under order of the Commission, class I line-haul railroads which participated in Ex Parte No. 305, *Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974*, are required to file quarterly reports of the items contained herein for the third and fourth calendar quarters of 1974 and the first and second calendar quarters of 1975. Reports should be prepared on a calendar quarter basis beginning with the first day of July, October, January, and April, respectively. Each carrier will receive a year's supply of these forms (a total of eight sets). Additional copies are available upon request. The original and nine copies of the reports (Xerox copies are acceptable) should be filed with the Interstate Commerce Commission, Bureau of Accounts, Washington, D.C. 20423. The report for the third calendar quarter of 1974 should be filed on or before December 16, 1974. The remaining three quarterly reports should be filed on or before the fifteenth day of the second month following the end of the calendar quarter, i.e., February 15, 1975, May 15, 1975 and August 15, 1975.

2. The items reported in Schedules A, B, E, F, G and H should be taken from and agree with the accounts kept in conformity with the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission. The account numbers refer to the accounts in the Uniform System of Accounts. Reverse items should be shown in parentheses. Dollar amounts should be rounded to thousands and adjusted to the totals. The statistics shown in Schedule A, line 2 and Schedule C, lines 26 through 29 should be shown in thousands. The statistics shown in Schedules H and I should be shown as whole numbers.

3. The estimates of Deferred Maintenance and Delayed Capital Improvements reported on Schedules C and D, respectively, as well as the Equipment Data and Slow

Order Track reported on Schedule I, should reflect the status of these items on the last day of the calendar quarter.

4. Each quarterly report should be accompanied by a report as to the anticipated expenditures of the balance of the funds in Account 716, Capital and Other Reserve Funds, as reported on Schedule B, line 14.

5. The Ex Parte No. 305 Revenues Applied, as shown on Schedules E, F, G and H should represent expenditures of the revenues segregated in Account 716, Capital and Other Reserve Funds.

6. The certification must be completed by an officer of the carrier.

7. Questions pertaining to the completion of these forms should be directed to Mr. John Callaghan, area code 202 343-7830.

INTERSTATE COMMERCE COMMISSION
Bureau of Accounts

SCHEDULE A - REVENUES OBTAINED[a]
(Report dollars and ton-miles in thousands)

NAME OF RAILROAD

QUARTER ENDING 197

LINE NO.	ITEM	AMOUNT
1.	FREIGHT REVENUE FOR THE QUARTER INCLUDING EX PARTE NO. 305.	$
2.	REVENUE TON-MILES FOR THIS QUARTER.....	
3.	REVENUE PER TON-MILE [1 ÷ 2 (5 DEC.)].....	¢
4.	ALL OTHER REVENUES, INCLUDING EX PARTE 305.....	$
5.	TOTAL REVENUE INCLUDING EX PARTE 305 (1 + 4).....	
6.	TOTAL REVENUES FROM EX PARTE 305.....	
7.	ALLOWANCE FOR INCREASED COST OF MATERIAL AND SUPPLIES, OTHER THAN FUEL *(not to exceed 3 percentage points of the authorized increase)*[b]	$
8.	ALLOWANCE FOR INCREASED INCOME TAXES[c].....	
9.	YIELD FROM EX PARTE 305 [6 - (7 + 8)].....	
	a. The report for the calendar quarter ending Sept. 30, 1974 should include the effect of the additional Ex Parte 305 revenues received during the period of June 20, through June 30, 1974 as follows:	
10.	REVENUES FOR 6/20/74 - 6/30/74, INCLUDED ON LINE 6 ABOVE...	$
11.	MATERIAL AND SUPPLY ALLOWANCE FOR THE PERIOD OF 6/20/74 - 6/30/74, INCLUDED ON LINE 7.....	
	b. Show the full amount of increase in cost of materials and supplies due to price increase since October 1, 1973 for the three months of this quarter.	
12.	FOR THE MONTH OF_____.....	$
13.	FOR THE MONTH OF_____.....	
14.	FOR THE MONTH OF_____.....	
15.	TOTAL FOR THE THREE MONTHS OF THIS QUARTER.....	$

c The allowance for income taxes should include the effect of applicable tax benefits. The tax allowance shown on line 8 is on an incremental basis. (See Accounting Circular Number 150.)

NOTE: Attach hereto full explanation of methodology employed in deriving revenue data.

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SCHEDULE B - FUNDS SEGREGATED IN ACCOUNT 716, CAPITAL AND OTHER RESERVE FUNDS
(EX PARTE NO. 305 REVENUES ONLY)

NAME OF RAILROAD

QUARTER ENDING — 197

LINE NO.	ITEM	THIS QUARTER (a)	CUMULATIVE (b)
		(DOLLARS IN	THOUSANDS)
1.	BALANCE AT BEGINNING OF QUARTER	XXX	$
2.	FUNDS RECEIVED FROM INCREASED REVENUES	$	XXX
3.	INCOME FROM INVESTMENT OF EARMARKED FUNDS		XXX
4.	TOTAL (LINES 2 + 3)		XXX
5.	INCOME TAXES APPLICABLE TO FUNDS RECEIVED AND INCOME FROM INVESTMENTS		XXX
6.	TOTAL ADDITION TO ACCOUNT 716 (LINES 4 - 5)	XXX	
7.	TOTAL EX PARTE 305 FUNDS AVAILABLE (LINES 1 + 6)	XXX	$
8.	FUNDS DISBURSED:		
9.	a. DEFERRED MAINTENANCE	$	XXX
10.	b. DELAYED CAPITAL IMPROVEMENTS		XXX
11.	c. NEW CAPITAL IMPROVEMENTS[1]		XXX
12.	d. CURRENT OPERATIONS[2]		XXX
13.	TOTAL DISBURSEMENTS (TOTAL OF LINES 9 THROUGH 12)	XXX	$
14.	BALANCE OF EX PARTE 305 REVENUES IN ACCOUNT AT CLOSE OF THIS CALENDAR QUARTER (Line 7 - Line 13)	XXX	$

1. *Include herein disbursements applicable to new and additional capital improvements which have been approved by the Commission as being eligible for use of Ex Parte No. 305 revenues.*

2. *Include herein disbursements for the transfer of funds to Account 701, Cash, which have been authorized by the Commission.*

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SCHEDULE C - DEFERRED MAINTENANCE, PLANT AND EQUIPMENT

NAME OF RAILROAD

QUARTER ENDING 197

LINE NO.	ITEM	AMOUNT (Thousands)[1] (a)	AMOUNT IN COL. (A) REPRESENTED BY FACILITIES COVERED BY PENDING PETITIONS FOR ABANDONMENT (b)
1.	YARD SWITCHING TRACKS	$	$
2.	WAY SWITCHING TRACKS		
3.	RUNNING TRACKS		
4.	SUB-TOTAL (LINES 1 to 3)		
5.	BRIDGES AND TUNNELS		
6.	BUILDINGS		
7.	SHOPS AND ENGINEHOUSES		
8.	WHARVES AND DOCKS		
9.	COMMUNICATIONS AND SIGNALLING		
10.	ALL OTHER ROADWAY ACCOUNTS		
11.	TOTAL - ROAD (LINES 4 to 10)		
12.	FREIGHT TRAIN CARS:		
13.	BOX CARS		XXX
14.	REFRIGERATOR CARS		XXX
15.	GONDOLAS		XXX
16.	HOPPERS		XXX
17.	COVERED HOPPERS		XXX
18.	FLAT CARS		XXX
19.	ALL OTHER CARS		XXX
20.	SUB-TOTAL (LINES 13 to 19)		XXX
21.	LOCOMOTIVES		XXX
22.	WORK EQUIPMENT		XXX
23.	ALL OTHER EQUIPMENT		XXX
24.	TOTAL - EQUIPMENT (LINES 20 to 23)		XXX
25.	GRAND TOTAL (LINES 11 + 24)	$	$
26.	NUMBER OF CROSS TIES		
27.	SWITCH AND BRIDGE TIES (FT.B.M.)		
28.	TONS OF RAIL		
29.	TOTAL OF LINES 26, 27 & 28[2]		

1. *Costs expressed in terms of wage rates and prices as of* _____

2. *Line 29, the total of lines 26, 27 and 28, is used solely for the machine processing of this form.*

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SCHEDULE D - DELAYED CAPITAL IMPROVEMENTS

NAME OF RAILROAD

QUARTER ENDING 197

LINE NO.	ACCOUNT	AMOUNT (Thousands)
1.	(3) GRADING	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS	
3.	(8) TIES	
4.	(9) RAILS	
5.	(10) OTHER TRACK MATERIAL	
6.	(11) BALLAST	
7.	(12) TRACK LAYING AND SURFACING	
8.	(20) SHOPS AND ENGINEHOUSES	
9.	(25) TOFC/COFC TERMINALS	
10.	(26) COMMUNICATION SYSTEMS	
11.	(27) SIGNALS AND INTERLOCKERS	
12.	(29) POWER PLANTS	
13.	(37) ROADWAY MACHINES	
14.	(44) SHOP MACHINERY	
15.	(45) POWER PLANT MACHINERY	
16.	ALL OTHER ROAD	
17.	TOTAL - ROAD EXPENDITURES	
	EQUIPMENT	
18.	(52) LOCOMOTIVES	
19.	(53) FREIGHT TRAIN CARS	
20.	(55) HIGHWAY REVENUE EQUIPMENT	
21.	(57) WORK EQUIPMENT	
22.	ALL OTHER EQUIPMENT	
23.	TOTAL - EQUIPMENT EXPENDITURES	
24.	(71)(76)(77) TOTAL - GENERAL EXPENDITURES	
25.	(80) OTHER ELEMENTS OF INVESTMENT	
26.	(90) CONSTRUCTION WORK IN PROGRESS	
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS	$

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SCHEDULE E-TOTAL MAINTENANCE OF WAY EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

NAME OF RAILROAD

QUARTER ENDING – 197

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a) DOLLARS IN	EX PARTE NO. 305 REVENUES APPLIED[1] (b) THOUSANDS
1.	(201) SUPERINTENDENCE	$	$
2.	(202) ROADWAY MAINTENANCE - YARD SWITCHING TRACKS		
3.	- WAY SWITCHING TRACKS		
4.	- RUNNING TRACKS		
5.	(212) TIES - YARD SWITCHING TRACKS		
6.	- WAY SWITCHING TRACKS		
7.	- RUNNING TRACKS		
8.	(214) RAILS - YARD SWITCHING TRACKS		
9.	- WAY SWITCHING TRACKS		
10.	- RUNNING TRACKS		
11.	(216) OTHER TRACK MATERIAL - YARD SWITCHING TRACKS		
12.	- WAY SWITCHING TRACKS		
13.	- RUNNING TRACKS		
14.	(220) TRACK LAYING & SURFACING - YARD SWITCHING TRACKS		
15.	- WAY SWITCHING TRACKS		
16.	- RUNNING TRACKS		
17.	(206, 208, 210, 218, 221) OTHER TRACK ACCOUNTS		
18.	- YARD SWITCHING TRACKS		
19.	- WAY SWITCHING TRACKS		
20.	- RUNNING TRACKS		
21.	SUB-TOTALS (LINES 2 to 20 - YARD SWITCHING TRACKS		
22.	- WAY SWITCHING TRACKS		
23.	- RUNNING TRACKS		
24.	(227) STATIONS AND OFFICE BUILDINGS		
25.	(235) SHOPS AND ENGINEHOUSES		
26.	(247) COMMUNICATION SYSTEMS		
27.	(249) SIGNALS AND INTERLOCKERS		
28.	(269) ROADWAY MACHINES		
29.	(271) SMALL TOOLS AND SUPPLIES		
30.	(277) EMPLOYEES' HEALTH AND WELFARE BENEFITS		
31.	(227-282, EXCLUDING ABOVE AND 266, 267, 278 and 279) OTHER MAINTENANCE ACCOUNTS		
32.	SUB-TOTAL (LINES 24 to 31)		
33.	(278) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-DR		
34.	(279) MAINTAINING JOINT TRACKS, YARDS & OTHER FACILITIES-CR		
35.	SUB-TOTAL (LINES 33 and 34)		
36.	TOTAL OF LINES 1 + 21 + 22 + 23 + 32 + 35		
37.	(266-267) DEPRECIATION AND RETIREMENTS		
38.	GRAND TOTAL-MAINTENANCE OF WAY & STRUCTURES (LINES 36 and 37)		
39.	FREIGHT EXPENSE[2]		
40.	PASSENGER EXPENSE[2]		
41.	PAYROLL TAXES APPORTIONED TO ABOVE	$	$

1. Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.
2. The separation between freight and passenger service may be estimated. (Explain procedure)

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NAME OF RAILROAD

SCHEDULE F-TOTAL MAINTENANCE OF EQUIPMENT EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING 197

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
		DOLLARS IN	*THOUSANDS*
1.	(301) SUPERINTENDENCE	$	$
2.	(302) SHOP MACHINERY		
3.	(311) LOCOMOTIVES - REPAIRS -- YARD		
4.	-- OTHER		
5.	(314) FREIGHT TRAIN CARS - REPAIRS		
6.	(317) PASSENGER TRAIN CARS - REPAIRS		
7.	(335) EMPLOYEES' HEALTH AND WELFARE BENEFITS		
8.	SUB-TOTAL (LINES 1 to 7)		
9.	(304, 306, 318, 323, 326, 328, 329, 332, 333, 334, 339) OTHER MAINTENANCE ACCOUNTS		
10.	TOTAL (LINES 8 + 9)		
11.	(336) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - DR		
12.	(337) JOINT MAINTENANCE OF EQUIPMENT EXPENSES - CR		
13.	SUB-TOTAL (LINES 11 - 12)		
14.	(305, 330, 331) DEPRECIATION AND RETIREMENTS		
15.	GRAND TOTAL (LINES 10 + 13 + 14)		
16.	FREIGHT EXPENSE[2]		
17.	PASSENGER EXPENSE[2]		
18.	PAYROLL TAXES APPORTIONED TO ABOVE	$	$

1. Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for deferred maintenance.

2. The separation between freight and passenger service may be estimated. (Explain procedure)

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SCHEDULE G - TOTAL CAPITAL EXPENDITURES AND APPLICATION OF EX PARTE 305 REVENUES

QUARTER ENDING 197

LINE NO.	ACCOUNT	TOTAL EXPENDITURES FOR THE QUARTER[1] (a)	EX-305 REVENUES APPLIED[2] DELAYED PROGRAMS (b)	EX-305 REVENUES APPLIED[2] NEW PROGRAMS (c)
		(DOLLARS IN THOUSANDS)		
1.	(3) GRADING	$	$	$
2.	(6) BRIDGES, TRESTLES AND CULVERTS			
3.	(8) TIES			
4.	(9) RAILS			
5.	(10) OTHER TRACK MATERIAL			
6.	(11) BALLAST			
7.	(12) TRACK LAYING AND SURFACING			
8.	(20) SHOPS AND ENGINEHOUSES			
9.	(25) TOFC/COFC TERMINALS			
10.	(26) COMMUNICATION SYSTEMS			
11.	(27) SIGNALS AND INTERLOCKERS			
12.	(29) POWER PLANTS			
13.	(37) ROADWAY MACHINES			
14.	(44) SHOP MACHINERY			
15.	(45) POWER-PLANT MACHINERY			
16.	ALL OTHER ROAD			
17.	TOTAL - ROAD EXPENDITURES			
	EQUIPMENT			
18.	(52) LOCOMOTIVES			
19.	(53) FREIGHT TRAIN CARS			
20.	(55) HIGHWAY REVENUE EQUIPMENT			
21.	(57) WORK EQUIPMENT			
22.	ALL OTHER EQUIPMENT			
23.	TOTAL - EQUIPMENT EXPENDITURES			
24.	(71, 76, 77) TOTAL GENERAL EXPENDITURES			
25.	(80) OTHER ELEMENTS OF INVESTMENTS			
26.	(90) CONSTRUCTION WORK IN PROCESS			
27.	GRAND TOTAL - ALL INVESTMENT ACCOUNTS (LINES 17 + 23 through 26)	$	$	$

1. Amount reported should include expenditures for original road and equipment and road extensions and A's and B's on both owned and leased property, but not including expenditures for purchase of existing lines.

2. Insert in column (b) that portion of the expenses shown in column (a) which were a result of expenditures of Ex Parte 305 funds for delayed capital improvement programs; and insert in column (c) that portion of the Ex Parte 305 funds which were applied to new capital improvement programs having prior approval by this Commission for the use of Ex Parte 305 funds.

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NAME OF RAILROAD

SCHEDULE H - COST AND UNITS OF TIES AND RAILS LAID
Report dollars in thousands, units in whole nos.

QUARTER ENDING 197

LINE NO.	ITEM	SOURCE OF ANNUAL DATA	TOTAL EXPENDITURES FOR THE QUARTER (a)	EX PARTE NO. 305 REVENUES APPLIED[1] (b)
1.	TOTAL COST OF TIES LAID			
2.	IN REPLACEMENT:			
3.	CROSS TIES	SCH. 513, COL. (d)	$	$
4.	SWITCH AND BRIDGE TIES	SCH. 513, COL. (g)		
5.	IN ADDITIONAL TRACKS:			
6.	CROSS TIES	SCH. 514, COL. (d)		
7.	SWITCH AND BRIDGE TIES	SCH. 514, Col. (g)		
8.	TOTAL COST OF RAILS LAID			
9.	IN REPLACEMENT:			
10.	RUNNING TRACKS, ETC.	SCH. 515, Col. (d)		
11.	YARD TRACKS, ETC.	SCH. 515, Col. (h)		
12.	IN ADDITIONAL TRACKS:			
13.	RUNNING TRACKS, ETC.	SCH. 516, COL. (d)		
14.	YARD TRACKS, ETC.	SCH. 516, COL. (h)	$	$
15.	TOTAL TIES LAID		(WHOLE NUMBERS)	
16.	IN REPLACEMENT:			
17.	CROSS TIES (NUMBER)	SCH. 513, COL. (b)		
18.	SW. AND BR. TIES (BD. FT.)	SCH. 513, COL. (e)		
19.	IN ADDITIONAL TRACKS:			
20.	CROSS TIES (NUMBER)	SCH. 514, COL. (b)		
21.	SW. AND BR. TIES (BD. FT.)	SCH. 514, COL. (e)		
22.	TOTAL RAILS LAID			
23.	IN REPLACEMENT:			
24.	RUNNING TRACK, ETC. (TONS)	SCH. 515, COL. (c)		
25.	YARD TRACKS, ETC. (TONS)	SCH. 515, COL. (g)		
26.	IN ADDITIONAL TRACKS:			
27.	RUNNING TRACK, ETC. (TONS)	SCH. 516, COL. (c)		
28.	YARD TRACKS, ETC. (TONS)	SCH. 516, COL. (g)		
29.	TOTAL (LINES 3 through 28)[2]			

1. *Insert in colum (b) that portion of the expenses and units shown in colum (a) which were a result of the expenditures of the Ex Parte 305 funds segregated in Account 716, Capital and Other Reserve Funds.*

2. *Line 29, the total of lines 3 through 28, is used solely in the machine processing of this form.*

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SCHEDULE I - EQUIPMENT DATA AND SLOW ORDER TRACK

QUARTER ENDING 197

EQUIPMENT DATA

LINE NO.	TYPE OF CAR	NUMBER OWNED OR LEASED (a)	HOME CARS UNDERGOING OR AWAITING REPAIRS: NUMBER (b)	HOME CARS UNDERGOING OR AWAITING REPAIRS: PERCENT (c)
1.	BOX CARS			
2.	REFRIGERATOR CARS			
3.	GONDOLAS			
4.	HOPPERS			
5.	COVERED HOPPERS			
6.	FLAT CARS			
7.	OTHER REVENUE CARS			
8.	TOTAL-REVENUE CARS			
9.	COMPANY SERVICE CARS			

LINE NO.	LOCOMOTIVES	NUMBER OWNED OR LEASED (a)	NUMBER SERVICEABLE (b)	NUMBER UNSERVICEABLE (c)
10.	LOCOMOTIVE UNITS			

TRACK UNDER SLOW ORDERS

LINE NO.	CLASS OF TRACK	NUMBER OF SLOW ORDERS (a)	MILES OF TRACK COVERED BY SLOW ORDERS (b)
11.	YARD SWITCHING TRACKS		
12.	WAY SWITCHING TRACKS		
13.	RUNNING TRACKS		
14.	TOTAL		

Note: Do not include slow orders placed during routine maintenance. Slow orders in effect January 1, 1974, which were eliminated by subsequent reductions in operating schedules without overcoming the cause of the slow order should be included and so designated.

ACC-107 (10/74)

PAGE 10 of 10

CERTIFICATION

I, the undersigned _____ of
(Print or type name and title)

_____, state that this report was prepared
(Full name of reporting company)

by me or under my supervision; that I have carefully examined it; and, on the basis of my knowledge, belief, and verification (where necessary) I declare it to be a full, true and correct statement of the statistics in Schedules A through I, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

_____ _____
Signature *Telephone No. (Include Area Code)*

_____, 197_____
Date

ACC-107 (10/74)

SUPREME COURT OF THE UNITED STATES

No. 75-420

[Filed Nov. 19, 1975, Office Of Solicitor General]

UNITED STATES AND
INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

November 3, 1975

Mr. Justice Douglas and Mr. Justice Powell took no part in the consideration or decision of this matter.

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Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1975

No. 75-420

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION,
Appellants,

v.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY, ET AL.,
Appellees.

On Appeal From The United States District Court
for the Eastern District of Virginia

MOTION TO AFFIRM

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October 16, 1975

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Appellees.

On Appeal From The United States District Court for the Eastern District of Virginia

---

MOTION TO AFFIRM[1]

Chessie, pursuant to Rule 16 of the Rules of Court, moves that the final judgment and order of the District Court be affirmed on the ground that its unanimous decision is so obviously correct as to warrant no further review.

---

[1] Appellees, The Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and the Western Maryland Railway Company, are hereinafter collectively referred to as Chessie. Appellant Interstate Commerce Commission is hereinafter referred to as the Commission. References to the Jurisdictional Statement are denoted by JS followed by the appropriate page number. All emphasis has been added unless otherwise indicated.

QUESTION PRESENTED

Was the three-judge District Court clearly correct in deciding that the Congress has not authorized the Commission to control a carrier's expenditure of funds as a condition to withholding the suspension of rates?

STATEMENT OF THE CASE

This is a direct appeal from the final judgment and orders entered on April 22, 1975 by a District Court of three judges specially constituted pursuant to 28 U.S.C. §§ 2284 and 2325 (as then in effect), enjoining the Commission from enforcing against appellees certain provisions of its orders directing how revenues generated from increased rates should be spent.

On April 22, 1974, the nation's railroads filed a petition with the Commission (docketed as *Ex Parte No. 305*) for a ten per cent increase in their freight rates. In support of the petition, railroads other than Chessie submitted evidence in the form of verified statements that the additional revenues were needed for maintenance and capital improvements. Contrary to the Commission's implication (JS *passim*), and unlike the other carriers, Chessie never submitted any evidence as to how the additional revenues would be used.

As the District Court found, Chessie "*at no time*" represented to the Commission that the revenues from the increase would be applied exclusively to deferred maintenance or delayed capital improvements, however those terms might be defined. (JS 15a.) The Commission did not adopt its narrow definitions until after the increased rates had become effective pursuant to its authorization of June 3, 1974.

On June 3, 1974, the Commission suspended the original

tariff proffered by the carriers but authorized the refiling of a new tariff implementing a ten percent increase in freight rates and charges. The Commission's order stated that the carriers "should" spend the additional revenues to be derived from the increase in freight rates (other than amounts needed for increased costs of materials and supplies) on "capital improvements" and "deferred maintenance" of plant and equipment. (JS 46a.) Neither term was defined. The order went on to require the carriers to file reports concerning the extent of deferred maintenance and past and proposed capital spending, as well as estimates of the amount of additional revenues to be derived from the rate increase and the manner in which they were to be employed.

The reporting requirements were mandatory, but the paragraph purporting to govern carrier expenditures was not. Thus, Paragraphs 1, 2, 4 and 5 of the June 3, 1974 order, for reporting requirements, use the mandatory verb "shall" but, Paragraph 3, for expenditure requirements, uses the hortatory verb "should." (JS 45a-46a.) Note also the statement of Vice Chairman O'Neal characterizing the June 3rd order as an "admonition" and calling for sanctions to assure that the desired expenditures were made. (JS 54a.) Hence, the Commission's assertion (JS 6) that the June 3rd order provided that the railroads "must" spend most of the increase on deferred maintenance and "delayed" capital improvements does not reflect the facts.

The railroads, including Chessie, increased their rates by ten percent effective June 20, 1974. Thereafter, on July 18, 1974, the Commission entered a second order which *for the first time* required the expenditure of the additional revenue on "delayed" capital improvements and deferred maintenance, which terms were now *for the first time* nar-

rowly defined by the Commission.[2] Another new requirement was that the funds were not deemed to constitute usable assets of the carriers but were required to be segregated in a separate account unavailable for any other purpose. (JS 64a-66a.)

Chessie promptly sought reconsideration of the July 18th order, unequivocally stating that it had no projects which would qualify under the order. In the petition for reconsideration, Chessie informed the Commission that it had started a $300 million capital improvement program which was ineligible under the July 18th order because financing for the program was available and had been available at all pertinent times.

Reconsideration was denied by order entered August 9, 1974.[3] Chessie instituted the suit below on August 15, 1974, and secured a temporary restraining order against enforcement of the conditions on August 18, 1974.

Thereafter, on October 3, 1974, acting upon petitions filed by railroads other than Chessie, the Commission entered another order permitting the use of the revenue increase for new and additional capital improvements but

[2] "Deferred maintenance" was defined by the Commission in its July order to be "accrued deterioration" in a railroad's plant or equipment which has rendered its services to shippers "partially or wholly inadequate and/or has resulted in diminishing the railroads' competitive ability." (JS 56a.) "Delayed capital improvements" were defined to mean improvements "actually planned" but not undertaken because "funding or financing was not, or projected to be, available through June 30, 1975." (*Id.*)

[3] (JS 77a-84a.) The August 9th order also altered the terms of the July 18th order by changing the cut-off date for determining what constituted delayed capital improvements from June 1, 1974 to January 1, 1974. This earlier date was of no help to Chessie as Chessie's improvement program was undertaken in December, 1973. Also, the August 9th order did not change the requirement that eligible capital improvement programs had to be those for which financing "was not . . . available through June 30, 1975."

only if a carrier is able to establish to the Commission's satisfaction that it could not use the funds for delayed capital improvements and deferred maintenance.[4] In Chessie's view, the requirements of the October 3rd order were equally without statutory authority and Chessie promptly amended its complaint to the District Court to include the October 3rd order.

On April 22, 1975, the District Court in a unanimous decision enjoined enforcement of those portions of the Commission's orders which would have required Chessie to expend its revenues upon projects selected and defined by the Commission. It did not enjoin enforcement of that portion of the Commission's July 18, 1974 order which imposed the reporting requirements and remanded the case to the Commission for further proceedings consistent with the opinion of the District Court.

ARGUMENT

The Commission devotes most of its Jurisdictional Statement to a defense of the wisdom and reasonableness of the Commission's orders, particularly as applied to Chessie, rather than to a discussion of the issue decided by the District Court: namely, whether Congress has authorized the Commission to control a carrier's expenditure of funds as a condition to withholding the suspension of rates.

In its Statement of the Case, Chessie has sought to correct some of the factual errors in the Jurisdictional Statement. Chessie also desires to dispel any implication in the Jurisdictional Statement that Chessie has somehow misap-

[4] The October 3rd order defined the term "new and additional capital improvements" as projects over and above those *presently* undertaken, scheduled or committed. (JS 102a-103a.) Thus Chessie's $300 million capital improvement program undertaken earlier does not qualify.

propriated its new revenues. Chessie's submissions filed with the Commission under the reporting requirements of the July 18th order established that Chessie had expended without legal compulsion *ten times* the amount of additional revenues received from the ten percent rate increase available under the Commission's formula for maintenance and capital improvements. In the first half of 1974, before the rate increase, Chessie spent over $161 million for capital improvements and maintenance. In the first half of 1975, its expenditures for these purposes totaled over $235 million—an increase of roundly $75 million. In contrast, the rate increase generated only $7.4 million in additional revenues in the first half of 1975 after deductions for additional income taxes and increases in the cost of materials and supplies. But, in view of the Commission's narrow definitions of permissible purposes, had it not been for the protection of the temporary restraining order and the judgment below, no portion of Chessie's newly-acquired revenues could have been used for maintenance and capital improvements.[5]

Thus, the Commission's insistence that improvements in plant and equipment be accomplished as it directs rather

[5] The Commission's contention that Chessie's new revenues could be utilized under its orders is foreclosed by the record before the Commission. This contention is nothing more than an attack upon its own record. Subsequent to the July 18th order, Chessie, in its petition for reconsideration, stated that it had no projects within the the scope of the Commission's definitions. Such statements in the petition constitute evidence under the Commission's Rules. 49 C.F.R. § 1100.19. There was no evidence in the record to the contrary (except in respect to only one minor branch line as to which there was a challenge) and, in now claiming to the contrary, the Commission is not only attacking its own record but is also quarreling with its own order. Its August 12, 1974 order stated (JS 81a):

> "[T]he definitions of deferred maintenance and delayed capital improvements . . . reserves to the management of each railroad in the exercise of its proper and prudent managerial functions the determination of the extent to which these conditions exist in respect to their properties."

than as management determines does not serve the desired objective of improvement in railroad plant and equipment. Contrary to the Commission's claim (JS 13), the challenged conditions make it less likely rather than more likely that the public will receive adequate and efficient transportation service.

There is no authority to support the claimed power to impose the challenged conditions. On the contrary, as the District Court correctly stated (JS 19a-21a), the cases on the subject uniformly hold that the Commission has no power to control expenditures. *ICC* v. *Los Angeles,* 280 U.S. 52, 68-69 (1929); *United States* v. *Pennsylvania R.R.,* 242 U.S. 208, 231 (1916); *Missouri Pac. R.R.* v. *Norwood,* 42 F.2d 765 (W.D. Ark. 1930), *aff'd,* 283 U.S. 249 (1931).

In the *Los Angeles* case, the Commission claimed it had no power to compel railroads to build passenger stations. In the *Pennsylvania R.R.* case, the Commission denied any authority to order railroads to buy tank cars. The Court sustained the Commission in both instances, saying:

> "A proper statute would seem to require detailed directions, and we should expect the intention to be manifested in plain terms and not to have been left to be implied from the varied regulatory provisions of uncertain scope." 280 U.S. at 69.
>
> "[I]f Congress had intended such consequence . . . it would not have left its intention to be evolved from obscure language but would have put it in explicit declaration and with notice and time for accommodation to it." 242 U.S. at 231.

And, as the *Norwood* decision held, the Commission's power to grant or deny rate increases does not imply a power of direct control over railroad expenditures:

> "The power to [control expenditures] *directly* would be a decided step in advance of any congressional action

> before the Transportation Act . . . [and the Transportation Act] gives no power of directly supervising carrier expenditures. It provides control *only* through the rate of return allowed by the commission. Also, it clearly is aimed only at voluntary expenditures by the carrier." 42 F.2d at 773 (emphasis in original).

Until now, the Commission has consistently recognized this limitation of its authority. Shortly after enactment of § 15a(2) (49 U.S.C. § 15a(2)), the Commission held that this provision did not authorize it to restrain a carrier from expending revenues on an improvident contract. *Missouri-Kansas-Texas R.R.* v. *Kansas City Terminal Ry.*, 104 I.C.C. 203 (1925). There the Commission remarked:

> "[W]e are not commanded to insure or empowered to enforce such management, responsibility for which at all times rests upon the carriers." 104 I.C.C. at 224.

Since 1920, there have been a host of Commission decisions disclaiming any authority to direct the expenditures of a carrier.[6] Also, there have been repeated representations by the Commission to Congress disavowing any authority to order carriers to purchase or repair equipment, measures within the realm of maintenance and capital expenditures.[7]

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[6] *Wells & Son* v. *Chicago, B. & Q. R.R.*, 161 I.C.C. 145, 148-149 (1930); *Container Service*, 173 I.C.C. 377, 442 (1931); *Joseph A. Goddard Realty Co.* v. *New York, Chi., and St. L. R.R.*, 229 I.C.C. 497, 502 (1938); *Jacksonville Pt. Term. Oper. Assn.* v. *Alabama, Tenn. & N. R.R.*, 263 I.C.C. 111, 116 (1945); *Oliver Mfg. Supply Co.* v. *Reading Co.*, 297 I.C.C. 654, 658 (1956); *Adequacies-Passenger Service-Southern Pacific*, 335 I.C.C. 415, 420-424 (1969); *Duralite Co., Inc.* v. *Erie Lackawanna Ry.*, 339 I.C.C. 312, 314 (1971); *Increased Freight Rates, 1970 and 1971*, 339 I.C.C. 125, 180 (1971).

[7] *ICC 86th Annual Report to Congress* (1972) at 23; *ICC 84th Annual Report to Congress* (1970) at 9; *ICC 70th Annual Report to Congress* (1956) at 83; *ICC 61st Annual Report to Congress* (1947) at 128-130; *ICC 56th Annual Report to Congress* (1942) at 15-21 and 123-129.

As the District Court pointedly observed (JS 18a):

> "Never before has the Commission claimed that this section [15a(2)] expands its ratemaking power to embrace control over the expenditure of a carrier's revenue. Instead its decisions have been to the contrary."

Although the Commission has no precedent under the Interstate Commerce Act,[8] it claims, nevertheless, that authority to impose controls on carrier spending is conferred by § 15a(2) in conjunction with § 15(7) (49 U.S.C. § 15(7)), the suspension power. As the District Court pointed out, the suspension section expressly authorized the Commission to order refunds if an interim rate should be found unlawful, but is "silent about other conditions." (JS 17a.) Obviously, the Commission's suspension power does not

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[8] The Commission cites merely two cases to support its position. *D. C. Transit System* v. *Washington Metropolitan Area Transit Commission*, 466 F.2d 394 (D.C. Cir. 1972), and *United Tel. Co. of Florida* v. *Mayo*, 215 So.2d 609, *appeal dismissed*, 394 U.S. 995 (1968). Neither is apposite. Neither involved an interpretation of the Interstate Commerce Act. In neither case was a rate increase granted. Neither case constitutes authority for the principle thot the lawfulness of an increase can be made to depend upon the future satisfaction *vel non* of conditions controlling the use of the newly-generated revenues. Instead, the decisions dealt with local regulatory commissions having their own unique statutory framework and history, and both agencies have more extensive powers than those conferred on the Interstate Commerce Commission. Unlike the Interstate Commerce Commission, the Washington Metropolitan Area Transit Commission had been granted comprehensive statutory authority to control every phase of the carrier's business (*e.g.*, to direct the hiring of safety consultants, the repair of air-conditioners and radios, the allocation of funds for marketing promotion, the kind and quality of service on specified routes, the purchase of new air-conditioned buses, the employment of additional supervisors and the expansion of telephone information services). 466 F.2d at 411 n. 120. Similarly, in *United Tel.*, the Florida Public Service Commission had been granted comprehensive power over the utility's affairs (*e.g.*, to require the installation of toll stations and lines, to order improvements to or changes in any line, and to promulgate regulations with respect to installation of equipment, facilities, and service). Fla. Stats. Ann., Chs. 364 and 366.

enlarge its substantive powers. Accordingly, the Commission's case must rest upon implied authority which it says is to be found in § 15a(2).

Section 15a(2) requires consideration of certain factors "[i]n the exercise of [the Commission's] power to prescribe just and reasonable rates." That is all that it does. It does not expand the power to prescribe rates into the power to prescribe the uses to which the carriers' revenues may be applied.

In the only instance where Congress intended to confer upon the Commission jurisdiction over the disposition of carrier revenues, it did so in clear and precise language. This was the so-called Recapture Clause of the Transportation Act of 1920, which provided that:

> "[A]ny carrier which receives . . . an income . . . in excess of a fair return shall hold such part of the excess . . . as trustee for and shall pay it to the United States." Act of February 28, 1920, Ch. 91 § 422, 41 Stat. 456, 489.

With the repeal of the Recapture Clause in 1933, the control granted therein to the Commission over carrier revenue ceased. No other specific Congressional grant of authority to the Commission over carrier revenues has ever been enacted, and there is no basis for reading any into the statute.

In the absence of precedent, the Commission resorts to adjectives, claiming that authority to control spending is "less intrusive" than the powers it disclaimed in the *Los Angeles* and *Pennsylvania R.R.* cases. (JS 13.) The Commission also argues that it has simply required the railroads to spend the funds they said they needed for the purposes stated by the railroads and, if the railroads were dissatisfied with the conditions they had the right to decline the increase. (JS 15.)

As to the first contention, it is obvious that by selecting and defining those projects, and those projects alone, upon which millions of dollars in revenues from the rate increase must be spent, the Commission is attempting to exercise vast powers over the railroads—powers much more intrusive and coercive than those it disclaimed in the *Los Angeles* and *Pennsylvania R.R.* decisions. The question, however, is not whether the asserted power may be characterized as intrusive or otherwise. The question is whether the power exists.

As to the second contention, the Commission is ignoring its lack of power and simply saying: "Take it or leave it." The Commission has, in essence, told Chessie, "We will not suspend, *provided* that you let us tell you what to do with your revenues." The short answer is that the Commission cannot forego its power to suspend as a trade-off for its imposition of unlawful conditions. The District Court was clearly right in refusing to permit the Commission to use its suspension power to legislate for itself new and revolutionary authority without any action by the Congress, and then to say to the carriers, "Take it or leave it." Such a bootstrap device could be utilized to support any power asserted by the Commission, however unlawful.

Throughout its Jurisdictional Statement, the Commission seeks to obscure the lack of support for its position in the statute and in all prior judicial and Commission decisions by pointing to the critical economic problems now facing the industry. (*E.g.*, JS 11-12.) But this cannot justify the Commission's arrogation of power which the statute reserves to management. Chessie shares the Commission's concern over the health and vigor of the industry, as evidenced by the massive expenditures Chessie has made to improve efficiency. But the Commission's concern cannot justify its exercise of a power not granted by Congress.

If the Interstate Commerce Act as it now exists is to be drastically altered by granting to the Commission the power here sought, this should be done only by Congress after full hearings and due deliberations by the appropriate committees, weighing all the complex facets of such an extreme proposal. This is the very essence of the legislative function.

The District Court has remanded the case to the Commission. The Commission will then reconsider its orders in light of the Court's determination that the conditions are unlawful. The Commission's authority to pass on the justness and reasonableness of the increase will still exist subject to the *caveat* that the reasonableness of the rates cannot be made to depend upon unlawful conditions. Thus, the statutory scheme of regulation envisioned by Congress and consistently observed until now by the Commission will be preserved and followed.

The three-judge District Court below carefully considered the Commission's contentions that § 15a(2) of the Act in conjunction with § 15(7) conferred upon the Commission the vast powers it now asserts for the first time in its history. After reviewing the *Los Angeles* and the *Pennsylvania R.R.* cases as well as all other judicial and Commission precedents on the subject, the District Court concluded (JS 21a-22a):

> "[These decisions] unmistakably establish that the Commission has no general power to control a railroad's expenditures. No provision of § 15(7), authorizing suspension of rate increases, implies that the Commission may exercise, as an incident to suspension, the control over expenditures that Congress has otherwise withheld from it. Lacking statutory authority to exercise this control directly, the Commission cannot accomplish the same result indirectly. *T.I.M.E.* v. *United States*, 359 U.S. 464, 475 (1959)."

The Commission has presented nothing in the way of argument or authority for a different result. If new fields are to be explored, that is for Congress, which by its hearing procedures can balance policies and articulate conditions and limitations.

CONCLUSION

The decision below warrants no further review. Chessie moves to affirm.

Respectfully submitted,

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No. 75-420

In the Supreme Court of the United States

OCTOBER TERM, 1975

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75–420

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

BRIEF FOR THE APPELLANTS

OPINIONS BELOW

The opinion of the district court (J.S. App. 1a–22a) is reported at 392 F. Supp. 358. The orders of the Interstate Commerce Commission in *Ex Parte No. 305, Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974* (J.S. App. 27a–111a) are unreported.

JURISDICTION

The judgment of the district court (J.S. App. 23a–24a) was entered on April 22, 1975. The notice of appeal was filed on June 20, 1975 (J.S. App. 25a–26a). By

order of August 12, 1975, the Chief Justice extended the time for docketing the appeal to and including September 18, 1975. The appeal was docketed on September 16, 1975, and probable jurisdiction was noted on November 3, 1975. The jurisdiction of this Court rests on 28 U.S.C. 1253 and 2101(b). *Aberdeen & Rockfish R.R.* v. *SCRAP*, 422 U.S. 289.[1]

QUESTION PRESENTED

In April 1974 the Nation's railroads sought a general rate increase of 10 percent, representing to the Commission that at least part of the increase was needed to provide funds for maintenance and capital improvements that had been delayed. The Commission found that the increase appeared to be unjust and unreasonable unless the railroads devoted the bulk of the new revenues to these purposes. The railroads then filed new tariffs, which are subject to Commission orders ensuring that the increased revenues will be put to the proposed use.

The question presented is whether the Commission has the power to issue such orders, as a condition of not suspending proposed rate increases.

[1] Pub. L. 93–584, 88 Stat. 1917, provides that after February 28, 1975, review of Interstate Commerce Commission orders is in the courts of appeals, with review in this Court by certiorari. The complaint in the instant case was filed on August 15, 1974, and the old procedure, which required such complaints to be heard by a three-judge district court with review in this court by direct appeal, therefore governs.

STATUTES INVOLVED

The National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding Section 1, provides in relevant part:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation * * *; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; * * *—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of [the Interstate Commerce Act] * * * shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 15(7) of the Interstate Commerce Act, 24 Stat. 384, as amended, 49 U.S.C. 15(7), provides:

> Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable

notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

Section 15a(2) of the Interstate Commerce Act, as added by 41 Stat. 488, and amended, 49 U.S.C. 15a(2), provides:

> In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

STATEMENT

A. BACKGROUND

Under the Interstate Commerce Act rates are set by the railroads, subject to disapproval by the Commission. A carrier may file a proposed rate increase

and after 30 days (or such shorter time as the Commission may authorize) the new rate becomes effective as a carrier-made rate. 49 U.S.C. 6(3). The Commission may suspend the proposed tariff for a maximum of seven months, while it conducts an investigation into the lawfulness of the rate. 49 U.S.C. 15(7). At the end of the suspension period the carrier may put the new tariff into effect unless the Commission, prior to that time, has completed its investigation and ruled that the proposed rate is unlawful. See *Arrow Transportation Co.* v. *Southern Ry.*, 372 U.S. 658.

These procedures govern both the carriers' collective requests for general revenue increases and individual rate filings. In general revenue proceedings, such as *Ex Parte 305*, involved here, the carriers as a group seek to increase the average rates charged. The average increase is an aggregate of the increases for particular commodities or specific groups of commodities; however, no specific authority is sought for any one of the particular increases.

If the carriers seeking a general revenue increase demonstrate that the increase is necessary to enable them to provide the Nation with adequate transportation and the Commission determines that it is consistent with the public interest, the Commission will authorize a general revenue increase.[2] The railroads then are free to increase their rates within the bounds

[2] See, *e.g.*, *Aberdeen & Rockfish R. R.* v. *SCRAP*, 422 U.S. 289, 311–319; *United States* v. *Louisiana*, 290 U.S. 70, 76–78. Cf. *Atchison, Topeka & Sante Fe Ry.* v. *Wichita Board of Trade*, 412 U.S. 800, 814, n. 10.

set by competition with each other and with alternative modes of transportation, so long as the revenue generated by the increases does not exceed the maximum the Commission has authorized.

B. PROCEEDINGS BEFORE THE COMMISSION

On April 22, 1974, the Nation's railroads (including appellees, the Chessie system) [3] filed a joint petition seeking permission to file tariffs embracing a 10 percent increase in the level of their freight rates to become effective on May 2, 1974 (App. 95–130).[4] The petition stated that "massive additional expenditures are required for maintenance and capital investments" (App. 107); supporting documents submitted by an industry association of which Chessie is a member estimated that these expenditures would exceed several billions of dollars annually.[5] See J.S. App. 30a, 33a–34a.

[3] The Chessie system ("Chessie") includes the Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railway Company, and the Western Maryland Railway Company.

[4] The Long Island Rail Road did not join this request. J.S. App. 41a, n. 1. This request, as is common in general revenue proceedings, was made by the railroads after using the conference machinery authorized by 49 U.S.C. 5b.

[5] The petition was joined by Chessie in all particulars, including the petition's assertion that the funds were needed to make repairs and capital improvements. Representatives of the rail industry and industry associations submitted numerous affidavits and documentation dealing with the problems of specific railroads and the industry in general (see, *e.g.*, App. 131–209). Chessie did not disassociate itself from these presentations. Among the supporting documents were pertinent portions of the "ASTRO

Numerous protests were filed in opposition to the proposed increase, and on April 30, 1974, the Commission issued an order denying the carriers' petition insofar as it sought to put the increase in effect on May 2, 1974 (J.S. App. 27a–31a). However, by order of May 3, 1974 (J.S. App. 32a–40a), the Commission authorized the railroads to file tariffs implementing the increase on 30 days' notice. The Commission also authorized the filing of further statements opposing the increase and a reply statement by the railroads.

The bulk of the statements in opposition then filed by shippers, associations of shippers, and by others, simply asserted that the increase was unjustified in whole or in part. But a number of statements, reflecting the acute concern of the Nation's shippers about the deterioration of railroad bed and facilities, asserted that the increase *was* justified, but only upon terms ensuring that the revenues would be spent in ways calculated to improve rail service. For example, the National Industrial Traffic League stated: "the Commission should provide for protection of the shipping public by imposing an obligation upon the railroads to carry out their undertakings with respect to

Report", a publication entitled "The American Railroad Industry: A Prospectus," a report by America's Sound Transportation Review Organization, June 30, 1970, compiled for the Association of American Railroads (App. 175–180). This report estimated that the Nation's railroads will require expenditures exceeding $3 billion per year through 1980 for maintenance and capital improvements. An update of this report (the "ASTRO II Report") has increased this estimate to $3.81 billion per year, and also was submitted to the Commission (App. 136–137, 156–164).

right-of-way improvements and service improvements" (App. 213).[6]

In reply to the shippers' statements the railroads, while disavowing any need for express conditions, reaffirmed their earlier statements that a principal justification for the increase was their need to obtain additional revenues necessary to carry out maintenance and improve deteriorating plant and equipment.

On June 3, 1974, the Commission entered the first of the four orders attacked in the court below (J.S. App. 41a–54a). The Commission stated that it "is convinced that the service provided by the nation's railroads is less than adequate and is in danger of further deterioration detrimental to the public interest, that in order to improve service the railroads must generate additional revenues, and that the increases proposed would, if permitted to become effective, generate additional revenues sufficient to enable the carriers to prevent further deterioration and improve service" (J.S. App. 42a–43a). But, the Commission went on, "if the schedules were permitted to become effective as filed and without conditions designed to promote service improvements, the increases proposed would be unjust and unreasonable and contrary to the dictates of the national transportation policy" (J.S. App. 43a). Accordingly, the Commission suspended the tariffs embracing the increase but authorized the railroads to file new tariffs subject to conditions pro-

[6] Also see the statements of General Mills, Inc. (App. 217–221) and the Pillsbury Company (App. 214–216) to similar effect.

viding that most of the increase must be spent on deferred maintenance and delayed capital improvements.[7] This order was served on June 4, and the next day all the Nation's railroads, including Chessie, filed new tariffs pursuant to the terms and conditions of the June 3 order. The Commission did not suspend them and they became effective.[8]

On July 18, 1974, the Commission entered the second order at issue (J.S. App. 55a–76a). This order clarified the June 3 order by defining the terms "deferred maintenance" and "delayed capital improvements."[9] The Commission also established accounting and reporting requirements in order to verify compliance with the June 3 order (J.S. App. 64a–76a). The July 18 order provided that an increase of as much as three percent was authorized to be applied to increased material and supply costs (other than fuel), but that the balance of any revenues derived from the increase would have to be applied to deferred maintenance and delayed capital improvements (J.S. App. 64a). However, any income taxes incurred as a result of the increase could be subtracted in determining that balance, and, of course, since the increase was permissive in nature, the railroads were not required to take the full amount.[10]

[7] The conditions are reprinted in J.S. App. 45a–49a.

[8] By order of June 6, 1975, the Commission extended until April 30, 1976, the effectiveness of these interim increases. See J.S App. 106a–111a.

[9] These definitions appear at J.S. App. 56a–57a.

[10] Subsequent reports to the Commission indicated that the Chessie and nearly all other carriers implemented an effective rate of increase between eight and nine percent.

On July 30, 1974, Chessie requested the Commission to amend its orders to provide that a railroad without "deferred maintenance" or "delayed capital improvements," as defined, could expend for any valid corporate purpose the funds generated by the increase (App. 222–226). Chessie expressed concern that it had no "deferred maintenance" or "delayed capital improvements" and that it therefore would be unable to make use of the increase.[11] In addition, Chessie's petition raised for the first time the argument that the Commission is without power to impose such conditions (App. 226). The Nation's other railroads also filed a joint petition for reconsideration and clarification but did not challenge the Commission's power to impose conditions.

The Commission's order of August 9, 1974 (J.S. App. 77a–84a), while denying all petitions for reconsideration, further clarified the Commission's decisions by providing that carrier management would retain discretion to decide what projects meet the definitions of deferred maintenance and delayed capital improvements (*id.* at 81a) and by providing that railroads need not obtain Commission approval for particular projects. The Commission also recognized that some railroads, in anticipation of the increase, already had initiated improvement projects. In order to take account of this, the Commission allowed each railroad

[11] Chessie argued that on May 13, 1974, its boards of directors had approved a $124 million capital improvement program (App. 223). Under the Commission's orders, only capital improvements authorized after June 1, 1974, could be paid for with funds from the rate increase. See J.S. App. 56a.

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to count, as delayed capital improvements, projects to which funds initially were committed after January 1, 1974 (*id.* at 83a).[12] This plan was designed to allow railroads to use old revenues for ordinary expenditures or projects already planned, while diverting the new revenues to supplemental improvements.

Chessie brought this suit on August 15, 1974, seeking to set aside the Commission's orders of June 3, July 18 and August 9 (App. 4–14). No other railroad joined in the suit. On August 18 District Judge Merhige issued a temporary restraining order prohibiting the Commission from enforcing its orders against Chessie (App. 30–33).

On August 16, 1974, most of the Nation's railroads, but not Chessie, filed with the Commission another petition for clarification and modification of the July 18 and August 9 orders (App. 227–232). On August 22 the Commission reopened the matter (J.S. App. 85a–92a). It held oral argument on August 27, at which, by order of the Commission (J.S. App. 91a–94a), counsel for Chessie and the other railroads appeared.[13]

On October 3, 1974, the Commission entered an order substantially modifying the conditions estab-

[12] As a result, Chessie's $124 million program (note 11, *supra*) fell within the definition of delayed capital improvements.

[13] Chessie resisted appearing at this argument, contending that the filing of its complaint in court deprived the Commission of farther jurisdiction over it (App. 236–237). Relying upon *American Farm Lines* v. *Black Ball Freight Service*, 397 U.S. 532, 541–542, the Commission rejected that claim (J.S. App. 93a–94a). Chessie sent a representative to the argument.

lished by the prior orders (J.S. App. 98a–105a). The October 3 order provided (*id.* at 104a):

> * * * That railroad respondents, if any, which are unable to use the full amount of the funds generated by the increase for deferred maintenance or delayed capital improvements, as defined in this proceeding, may expend such funds for new and additional capital improvements providing advance approval is obtained from the Commission * * *.

Chessie amended its complaint (App. 34–44) to challenge the October 3 order as well. It claimed that the new order would not help it because its maintenance and capital projects could not qualify as "new and additional capital improvements" (App. 37–38). Chessie never sought the Commission's opinion on this matter, however, and never sought permission to proceed under the October 3 option.[14]

C. THE DECISION OF THE DISTRICT COURT

In October 1974 the United States and the Commission filed their answer to the amended complaint (App. 45–53). The answer contended that the Commission's orders were unreviewable suspension orders, that Chessie had failed to exhaust its administrative remedies, that Chessie was estopped from attacking the conditions because it was enjoying the benefits of the increase, and that the Commission's orders were lawful. Appellants simultaneously filed a motion to

[14] Seventeen railroads have been granted authority under the October 3 order; six have been denied such authority (J.S. App. 107a–108a).

dissolve the temporary restraining order issued in August 1974 (App. 54–55) and an affidavit of a Commission auditor indicating that Chessie's claim that it had no deferred maintenance was without factual support (App. 65–75).

The district court's judgment, entered on April 22, 1975, enjoined the Commission from enforcing against Chessie those portions of the challenged orders that required revenues derived from *Ex Parte 305* to be spent for specified purposes (J.S. App. 23a–24a).

The court's opinion rejected the preliminary defenses raised in the answer (J.S. App. 7a–16a). The court also rejected Chessie's contention that it should not have been required to keep records concerning how it spends the increased revenues it collects; the court held that the accounting and reporting requirements are unreviewable incidents of the Commission's suspension power (*id.* at 11a). Chessie has not appealed that portion of the court's judgment, and we do not seek review of the district court's disposition of the preliminary issues.

As to the merits, the district court recognized that the Commission's orders "are a well-intentioned effort to cope with the vexatious deterioration of track and equipment that saps the ability of the nation's railroads to serve the public adequately" (J.S. App. 22a), and that Chessie's facilities, like those of virtually all the Nation's railroads, "require additional maintenance and improvement" (*id.* at 15a). It concluded, however, that the conditions imposed by the Commis-

sion on the expenditures of the increased revenues are unlawful.

The court began with a recognition that "the Commission can impose conditions that have been expressly or impliedly authorized by law" (J.S. App. 16a). Because no provision of the Interstate Commerce Act expressly grants to the Commission the power to condition a revenue increase upon a particular use of the funds so generated, the court then inquired whether the Commission had been granted that power implicitly. It turned to Section 15a(2), upon which the Commission had relied, as a possible source of such implicit power.

The court held that Section 15a(2) does not create the necessary implicit power. It asserted that "[n]ever before has the Commission claimed that this section expands its rate-making power to embrace control over the expenditure of a carrier's revenue" (J.S. App. 18a), and observed that no other court had considered the precise issue before it. It drew an analogy to several cases in which courts had indicated that the Commission lacks the power to direct railroads to invest their capital in particular ways, stating that "courts have uniformly held that the Commission lacks statutory authority to order railroads how to spend their funds" (*id.* at 19a). Although recognizing that none of those cases dealt with the suspension of rates, the court held that "they unmistakenly establish that the Commission has no general power to control a

railroad's expenditures" (*id.* at 21a). Since, in the court's view, the requirements laid down by the Commission as conditions of nonsuspension of the proposed increases are an indirect attempt to accomplish an objective that could not be accomplished directly, it held that the conditions are invalid.

INTRODUCTION AND SUMMARY OF ARGUMENT

It is now widely understood that there is a crisis facing the Nation's railroads—a crisis characterized by a chronic inability to generate revenues sufficient to maintain a quality of service that would make railroads an attractive mode of transportation. The deterioration of the quality of service has been followed by further loss of patronage and further insufficiency of revenue. In short, a vicious circle has been established.[15] Most of the railroads in the northeastern United States are bankrupt, and a major midwestern carrier recently has become bankrupt.[16] This crisis caused Congress to reorganize the northeastern rail system under the Regional Rail Reorganization Act of 1973, 87 Stat. 985, 45 U.S.C. (Supp. III) 701 *et seq.* See generally *Regional Rail Reorganization Act Cases,* 419 U.S. 102.

The railroads—including Chessie—that requested the Commission to allow them to increase their rates

[15] See generally Altman, *Predicting Railroad Bankruptcies in America,* 4 Bell J. Econ. & Mgt. Sci. 184 (1973).

[16] The Chicago, Rock Island & Pacific Railroad filed for bankruptcy on March 17, 1975. *In re Chicago, Rock Island & Pacific R.R.*, No. 75B–2697, N.D. Ill.

argued strenuously that a rate increase was necessary to enable them to repair and improve their facilities. The Association of American Railroads, of which Chessie is a member, furnished to the Commission the "ASTRO Report," a comprehensive document indicating that the railroads need massive sums of money for maintenance and capital improvement.[17] The maintenance deficiencies noted by the Commission here (J.S. App. 47a–48a) also have been noted by Congress. S. 2718, 94th Cong., 1st Sess. (1975), the "Railroad Revitalization and Regulatory Reform Act of 1975," has been passed by both Houses of Congress and is awaiting transmission to the President. If signed by the President, it would provide approximately seven billion dollars of public money for the railroads' use.[18] Other laws already enacted are ad-

[17] See note 5, *supra.*

[18] See S. Rep. No. 94—499, 94th Cong., 1st Sess. 21–23 (1975). The estimates projected by various groups were described as follows: "The United States Railway Association projected, in the Final System Plan, that between 1976 and 1985 ConRail must invest over $6 billion in rehabilitation and improvement programs. Over $4 billion of this sum will be for improvements to fixed plant (one-third in rehabilitation monies and two-thirds for other improvements). Almost $2 billion will be spent for the acquisition of rolling stock and other equipment.

* * * * *

"The First National City Bank, with the aid of statistical data made available by the Department of Transportation and the Association of American Railroads, has projected that over the same 10 years, 1976 through 1985, the Nation's railroads, excluding ConRail, will need to invest in rehabilitation and improvement programs just short of $34 billion. Of that aggregate sum, almost $19 billion is foreseen as necessary for improvements to fixed plant (allocated as between spending for rehabilitation and spending

dressed to the same needs.[19] The Commission itself, in light of the railroads' revenue needs, has in a series of general revenue proceedings during the last

for other improvements in a manner quite similar to the USRA projections, i.e., about 30% (approximately $5.7 billion) for so-called catch-up maintenance and the 70% balance (approximately $13.1 billion) for other road expenditures). The remaining $15 billion First National City Bank projects as needed for acquisition of rolling stock and other equipment.

"The figures as to the amount of deferred maintenance in the nation's rail industry compiled by the Interstate Commerce Commission in its proceeding, *Ex Parte 305*, substantially comport with the $5.7 billion found by FNCB in its study.

"Moreover, the USRA in its analysis and discussion which accompanied the FSP also found deferred maintenance and delayed capital improvements to total $7.2 billion. This enormous figure reflects the insufficient earnings and inability to borrow prevalent in the rail industry.

"Because the capital needs of the Rail Industry appeared so enormous the Surface Transportation Subcommittee, in conjunction with the Transportation and Commerce Subcommittee of the House Committee on Interstate and Foreign Commerce, asked the Office of Technology Assessment (OTA) to provide an analysis of the nation's rail industry to supplement its evaluation of the United States Railway Association's Final System Plan. As part of that analysis by OTA, a study was conducted by Harbridge House, Inc. regarding the financial prospects of the rail industry and the industry's rehabilitation needs.

"In its report to the Office of Technology Assessment, Harbridge House evaluated the FNCB study described above. With the cooperation of FNCB, Harbridge House modified the FNCB projections in certain respects and determined that rail industry will experience a ten year cash shortfall of $5.0 billion.

"This cash shortfall which the nation's railroads face could increase by about $7 billion if, because of continuing financial weakness, the railroads lose their ability to finance equipment in the private sector."

[19] See, *e.g.*, Pub. L. 94–25, 89 Stat. 90, the "Amtrak Improvement Act of 1975" (May 26, 1975) (authorizing more than $1 billion to be spent over the next 27 months for operating and capital expenditures of the National Railroad Passenger Corporation).

seven years allowed the roalroads to increase their freight rates by approximately 60 percent. See J.S. App. 54a. These increases, granted without limits upon how the new revenues could be used, have not halted the deterioration of the railroads' plant and equipment.

Chessie, although a profitable railroad, shares the maintenance problems of other railroads. As the district court observed: "We have no doubt that Chessie's facilities require additional maintenance and improvement. For example, in 1973 it had 240 derailments because of defects and failures in its roadway as compared with 87 in 1964, an increase of 176 percent" (J.S. App. 15a). It is also beyond serious dispute that Chessie is replacing its ties and track at a rate requiring the ties to have a service life of 59 years before replacement (App. 67–69), whereas the industry standard, according to the ASTRO Report, is 35 years (App. 179). Chessie, like the other railroads, continues to fall behind in important repairs, maintenance and capital improvements.

In large measure the problems of the railroads have been caused by competition from alternative means of transportation, such as trucks, ships, barges, pipelines and aircraft. But the chronic maintenance problem also is attributable to the fact that under a system of rate regulation rates and quality of service are inextricably intertwined. A firm subject to maximum price regulation usually can increase its short-term profits by reducing its expenditures for maintenance. Because foregoing preventive maintenance and deferring making replacements usually does not produce an immedi-

ately observable deterioration in service quality, the firm can reduce its expenditures without reducing its revenues. Moreover, its competitors probably will follow the same strategy. In the long run, of course, this strategy is destructive, and a firm engaging in it would plan to make future investments in maintenance and improvements. But a firm subject to limitations upon the maximum prices it can charge, to severe competition from competing modes, and to declining demand for its services, may never be able to make up in the long run for savings taken in the short run.[21] Although the firm can improve its short term position by deferring maintenance and improvements, it cannot attract new capital to make up the deficit."

The Nation's railroads now appear to be in a position that feeds upon itself. In the short run it is advantageous to defer maintenance and improvements in order to increase the cash available for other purposes or for investors. In the long run individuals and institutions are unwilling to infuse new capital into railroads because the railroads cannot offer an attractive return. The railroads therefore may be unable to make up for past and present deferrals. This presents the Commission with two alternatives: (1) it could allow the circle to continue; or (2) it could allow the railroads to attempt to raise capital from their customers in the form of increased rates.

[21] See also H.R. Rep. No. 94–725, 94th Cong., 1st Sess. 73 (1975).

[22] When demand is increasing and competition is restricted the effect may be the opposite. See White, *Quality Variation When Prices are Regulated*, 3 Bell J. Econ. & Mgt. Sci. 425 (1972) (collecting sources).

The Commission decided to take the latter course, following the request of the railroads themselves. In *Ex Parte 305* the railroads requested an increase substantially larger than what was justified by cost increases. They asserted that the greater increase would be just and reasonable because it would enable them to devote the revenues to maintenance and capital improvements that they otherwise would be unable to afford. The Commission determined that, on the basis of additional costs alone, an increase of three percent was the maximum permissible increase (J.S. App. 42a–43a, 51a).

The railroads' request posed a practical problem for the Commission. Previous unconditional rate increases had not led to improved maintenance, and the Commission had no reason to believe that another unconditional increase in *Ex Parte 305* would have any greater effect. What is more, under traditional theories of ratemaking, the Commission's function is to ascertain whether the proposed rates are necessary to enable the railroads to earn a fair rate of return on their investment. The railroads were requesting here, in effect, that the Commission authorize rates higher than those that would be justified by that criterion. If the Commission had decided to allow the railroads to collect such rates without assurance that they would be devoted to the purpose that, the railroads asserted, made them just and reasonable, it arguably would have exceeded its powers under the Interstate Commerce

Act. Finally, the Commission recognized that it could not ensure that the revenues would be devoted to the purpose stated by the railroads unless it could impose pre-expenditure controls. The railroads' incentives to scrimp on maintenance would of course survive any revenue increase, no matter how large.

In theory the Commission could discipline a railroad that misled it about the uses to which it would put revenues collected only with the Commission's permission by reducing that line's rates and requiring it to make refunds. But because the railroads compete with each other (freight usually can be sent over two or more lines using different routes to reach the same destination), if the Commission ordered an offending railroad to reduce its rates other lines would be compelled to follow suit and would themselves be deprived of the funds they need to make improvements.

The Commission therefore concluded that in order to help the railroads alleviate their chronic maintenance deficiencies it would have to allow them to collect greater revenues, but that it would also have to make sure that the revenues were devoted to the purpose that made the increase just and reasonable. It allowed the railroads to increase their rates by seven percent over and above the three percent that ordinarily would have been justified. Chessie now claims that it must be allowed to enjoy the increased rates without complying with the conditions that alone make the rates just and reasonable. The district court agreed with Chessie.

The district court recognized that the conditions imposed by the Commission are justified if the Interstate Commerce Act authorizes them either explicitly or implicitly. We submit that the necessary implicit authorization for the Commission's actions is provided by Section 15a(2) of the Interstate Commerce Act when read, as it must be, in conjunction with the National Transportation Policy.

The Commission's decision whether to allow rates to become (or to remain) effective depends upon whether the rates are "just and reasonable." Section 15a(2) states that "[i]n the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration * * * to the need, in the public interest, of adequate and efficient railway transportation * * * and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service." Section 15a(2) thus provides that the Commission is empowered to consider the relationship between service quality and price when setting rates. The Commission's decision to require the railroads to take steps calculated to improve the quality of their service, as a condition precedent to collecting increased rates, is a necessary concomitant to the Commission's powers under Sections 15a(2) and 15(7).

The power the Commission has asserted here:

> is intimately related to its power to set rates because a rate that would be reasonable for quality transportation service may well be unreasonable for inferior service;

is exercised only through the Commission's power over rates. The Commission has not attempted directly to control management's decisions;

does no more than direct the carriers to put the increased revenues to a use of the carriers' own choosing;

leaves to the carriers' management complete discretion concerning how it will expend the revenues within the broadest subject-matter constraints. Each railroad is free to set priorities, to select projects, and to determine how much will be spent upon each project and when it will be spent;

does not require any railroad to acquire or invest any of its own capital;

is not mandatory in nature. If any railroad desires to be free of the conditions the Commission believes are essential to make the increase just and reasonable, the railroad can avoid the conditions by declining to increase its rates.

Perhaps this case would stand in a different light if one or more of these factors were absent. But together they demonstrate how closely the conditions established by the Commission are related to its powers under Sections 15a(2) and 15(7).

If there is any uncertainty in this, it is dispelled by the National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding Section 1. The National Transportation Policy provides that "[a]ll of the provisions of [the Interstate Commerce Act] * * * shall be administered and enforced with a view to carrying out" the congressional declaration of policy. And Congress declared that it is the national transportation policy "to promote *safe, adequate,* economical and efficient service* * * —all to the end of developing, coordinating and *preserving* a national transportation system * * * adequate to meet the needs of commerce of the United States * * *" (emphasis added). If, as Chessie contends, only the carriers can determine whether and to what extent they will repair their facilities after the Commission has granted them a rate increase on the basis of their representations that the money was needed for such a purpose, then the Commission would be powerless to promote and preserve a safe and adequate transportation system. Under Chessie's construction of Section 15a(2), this part of the National Transportation Policy would be an exhortation by Congress that the Commission exceed its lawful powers. Since such a purpose should not be attributed to Congress, this Court should uphold the Commission's power to impose conditions in an attempt to achieve the goals set by the national transportation policy. As we discuss at pages 42–45, *infra,* the cases upon which the district court relied (all decided before the National Transportation Policy was enacted in 1940) are not to the contrary.

ARGUMENT

IN ORDER TO ENHANCE THE ADEQUACY AND EFFICIENCY OF THE NATION'S RAILWAY SYSTEM, THE COMMISSION HAS THE POWER TO REQUIRE THE CARRIERS TO USE REVENUES GENERATED BY A PERMISSIVE RATE INCREASE FOR THE PURPOSES THE CARRIERS INVOKED TO JUSTIFY THE INCREASE

In our view, the Interstate Commerce Act does not leave the Commission powerless to attempt to ensure

that railroads offer adequate service to the public. Under the Act, the Commission has the power to ensure that railroads, collecting increased rates only by the Commission's permission, will devote the revenues to the purposes for which, they say, they need the money. That is the only issue presented in this case, and it does not depend upon whether the restrictions on the use of revenues are reasonable, supported by evidence, or otherwise in accord with the standards governing the Commission's exercise of its discretion. The decision below is based solely upon a holding that the Commission is without authority to impose any restriction on the expenditure of funds derived from a rate increase. That narrow view of the Commission's powers is, we submit, incorrect.

A. THE NATURE AND HISTORY OF GENERAL REVENUE PROCEEDINGS INDICATE THAT THE COMMISSION IS ENTITLED TO INFLUENCE EXPENDITURES BY RAILROADS

At the heart of the district court's holding are, we believe, a number of misconceptions with respect to the nature and function of a general revenue proceeding. In order to illuminate these misconceptions, we begin with a brief discussion of the nature and history of the Commission's control over rates charged by regulated carriers.

The Transportation Act of 1920, 41 Stat. 456, created a scheme of regulation that was fundamentally different in nature, purpose and scope from the regulatory scheme embodied in earlier Interstate Commerce Act provisions. The Interstate Commerce Act originally had been designed primarily to protect

shippers against unreasonably high or discriminatory rates. It established machinery for posting, publishing and filing tariffs and established a single forum to enforce the railroad's common law obligations as a common carrier with respect to shippers in interstate commerce. See 24 Stat. 379. The Commission's powers to protect shippers were subsequently reinforced by giving the Commission the power to prescribe rates and the power to suspend rate changes for a limited period to permit the Commission to determine whether a proposed new rate would be just and reasonable.[22] These regulatory provisions did not, however, give the Commission any broad powers or responsibilities with respect to the financial health or practices of the railroads. So long as the railroads refrained from charging excessive or discriminatory rates or subjecting shippers to other unreasonable practices, their business affairs were unregulated by the Commission.

The First World War precipitated a fundamental change in the relationship between the federal government and the railroads. The government assumed direct control of the railroads during that war. After the war ended Congress concluded that the federal government should retain a considerable degree of control over the management of the railway system and that these powers and responsibilities should be vested in the Interstate Commerce Commission.

This increase of federal regulation was thought to be necessary because of serious deficiencies in the

[22] See generally *Arrow Transportation Co.* v. *Southern Ry.*, 372 U.S. 658, which describes many of these amendments.

railway system that, Congress believed, were likely to recur if all of the pre-war prerogatives were restored to the railroad owners and the state regulators. See 1 Sharfman, *The Interstate Commerce Commission* 94–103, 177–182 (1931).

The Transportation Act of 1920 gave the Commission a new set of powers that became effective when the railroads were returned to their owners. That Act authorized railroads to enter into pooling agreements with the approval of the Commission (49 U.S.C. 5), directed the Commission to formulate consolidation plans for the industry (*ibid.*), prohibited the opening of new lines or the abandonment of old ones without Commission approval (49 U.S.C. 1(18) and 1(20)), required the railroads to obtain Commission approval for securities offerings (49 U.S.C. 20a and 20b), gave the Commission the power to adjust the division of revenues from joint rates (49 U.S.C. 6), authorized the Commission to compel railroads to extend their lines and make connections (49 U.S.C. 1(21)), and expanded the Commission's power to compel changes in intrastate rates (49 U.S.C. 15 and 15a).

One of the major new rate provisions of the 1920 Act was Section 15a. Section 15a(2) then provided (41 Stat. 488):

> In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

Since a rate level that established a "fair return" for the "carriers as a whole" would yield an excessive return for some carriers and an inadequate return for others, the 1920 Act also created a mechanism for redistributing revenues among railroads. The "recapture clause" of Section 15a required railroads receiving revenues in excess of the "fair return" determined by the Commission to contribute a portion of the excess to a fund, which the Commission could use to loan money to less fortunate railroads to improve their facilities.

In *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R.R.*, 257 U.S. 563, 585, this Court described the Transportation Act of 1920 as a "new departure" that "imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." The Court concluded that those other steps included the power to increase intrastate rates for the

purpose of assuring that intrastate commerce makes an adequate contribution to the revenues needed to maintain an adequate national railway system.

In the *New England Divisions Case,* 261 U.S. 184, this Court concluded that the "other steps" also included changing the division of rates among railroads for the sole purpose of providing less affluent railroads with revenues necessary to improve their facilities. In reaching that conclusion the Court described the history and purposes of the 1920 Act as follows (*id.* at 189–190, footnotes omitted):

> Transportation Act, 1920, introduced into the federal legislation a new railroad policy. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R.R. Co.*, 257 U.S. 563, 585. Theretofore, the effort of Congress had been directed mainly to the prevention of abuses, particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to ensure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission, new powers were conferred and new duties were imposed.
>
> The credit of the carriers, as a whole, had been seriously impaired. To preserve for the nation substantially the whole transportation system was deemed important. By many railroads funds were needed, not only for improvements and expansion of facilities, but for adequate maintenance. On some, continued operation would be impossible, unless additional revenues were procured.

The Court described the basic purposes of the 1920 Act again in *Dayton-Goose Creek Ry.* v. *United States,* 263 U.S. 456, 478. The Court said: "The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden."

The general revenue proceeding authorized by Section 15a(2) necessarily became one of the central features of the new regulatory scheme. Although the Commission had sometimes considered the reasonableness of rates and rate changes collectively,[24] the 1920 Act changed the nature of such proceedings. Commission consideration of rates in general was no longer merely a convenient way for the Commission to discharge its obligation to determine whether carrier-initiated rate changes are just and reasonable, but also served as a means of fulfilling the Commission's obligation under Section 15a to determine whether the overall rate level in the nation or a particular region is in line with the aggregate revenue needs of the rail-

[24] See the *New England Divisions Case*, *supra*, 261 U.S. at 197–198, for a description of earlier general rate proceedings.

roads. A general rate proceeding became a general revenue proceeding.[25]

The 1920 Act did not, of course, give the Commission power to make all decisions in management's stead or to issue orders directing management to invest capital in particular ways. See *Interstate Commerce Commission* v. *United States ex rel. Los Angeles*, 280 U.S. 52. But, through the general revenue proceeding and Section 15a, it gave the Commission substantial *indirect* power to influence the decisions of management, when those decisions would affect the safety and adequacy of the railway system. The 1920 Act provided the Commission with the tools it needed to combat "the developing inadequacy of transportation plant and equipment" (Sharfman, *supra,* at 95).

Section 15a(2) assumed its current form in 1933. The Emergency Railroad Transportation Act of 1933, 48 Stat. 211, 220, repealed the recapture clause, directed the Commission to return remaining funds to the contributing railroads, and revised the rule of ratemaking.[26] The revised language omitted all references to a fair rate of return and substituted the

[25] See *United States* v. *Louisiana*, 290 U.S. 70, for a description of a general revenue proceeding conducted prior to the 1933 revision of Section 15a(2) (48 Stat. 220) and a discussion of the relationship between that procedure and the rule of ratemaking established in Section 15a(2).

[26] Subsequent amendments to Section 15a have not affected the substance of Section 15a(2). The Act of August 9, 1935, 49 Stat. 543, made formal changes. The Act of September 18, 1940, 54 Stat. 912, inserted the words "by the carrier or carriers for which the rates are prescribed." The Act of August 12, 1958, 72 Stat. 572, added Section 15a(3). And the Act of July 10, 1973, 87 Stat. 166, added 49 U.S.C. (Supp. III) 15a(4).

present language, which requires the Commission to give consideration to "the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

The reasons for the changes are described in the report of the House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 193, 73d Cong., 1st Sess. 28-30 (1933). The Committee observed that continuation of the recapture procedure would serve no useful purpose since none of the railroads have any excess revenues to recapture, and that past contributions should be returned to enable the contributing railroads to meet urgent cash needs. The Committee apparently concluded that it would also be futile to require the Commission to attempt to set rates that would provide a "fair return" to shareholders under depression conditions; it therefore stated new factors for the Commission to consider—factors that afforded the Commission even greater flexibility than it had possessed under the 1920 version of Section 15a(2).

This Court examined the effects of the 1933 amendment upon the Commission's functions in *Florida* v. *United States,* 292 U.S. 1. The Commission had issued a pre-amendment order requiring an increase in the intrastate rate for logs. The Commission had concluded that the intrastate shipments did not make a sufficient contribution to revenue, but had not found

that there was any discrimination against particular shippers or localities. Florida claimed that the Commission could no longer prescribe intrastate rates for revenue purposes because prior orders of this type had been sustained on the theory that they "supplemented" the Commission's Section 15a powers. Florida contended, in effect, that by repealing the recapture clause Congress had abandoned its effort to use rate regulation as a means of curing deficiencies in the railway system. This Court rejected that claim. It noted that the new language requires the Commission to consider "'the effect of rates on the movement of traffic'," "'the need * * * of adequate an efficient railway transportation service'" and "'the need of revenues sufficient to enable the carriers * * * to provide such service," and concluded that the amendment of Section 15a did not eliminate the Commission's power and responsibility to assure that intrastate commerce makes a sufficient contribution to an adequate railway system. *Florida* v. *United States, supra,* 292 U.S. at 7–8.

Florida v. *United States* supports our contention that the Commission has a continuing power and duty to utilize its rate regulation powers to promote a more adequate railway system. In particular, the Commission has the implicit power to impose conditions in an order authorizing a general rate increase, when those conditions are related to the adequacy and efficiency of the railway transportation system, are general in nature, and respond to needs identified by the railroads themselves.

If there were any doubt about the Commission's authority to use its ratemaking and suspension powers in this fashion, the doubt should have been dispelled by the National Transportation Policy, the preamble to the Act of September 18, 1940, 54 Stat. 899, 49 U.S.C. preceding Section 1. The National Transportation Policy declares that it is the "policy of the Congress" to provide for regulation designed "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; * * *—all to the end of developing, coordinating, and preserving a national transportation system * * * adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." The Policy concludes: "All of the provisions of [the Interstate Commerce Act] * * * shall be administered and enforced with a view to carrying out the above declaration of policy."

The Court has "made it clear that [the national transportation] policy is the yardstick by which the correctness of the Commission's actions will be measured." *Schaffer Transportation Co.* v. *United States,* 355 U.S. 83, 88. The Commission has used its ratemaking and suspension powers in this case in order to achieve the goals established by the National Transportation Policy, and, accordingly, this Court should uphold the conditions the Commission has imposed—conditions that render the increase just and reasonable in light of the unquestionable need to improve the railroads' deteriorating plant and equipment.

B. THE CONDITIONS ESTABLISHED BY THE COMMISSION ARE INTIMATELY RELATED TO RATEMAKING AND ARE IMPLICITLY AUTHORIZED BY THE COMMISSION'S POWER TO DISAPPROVE UNJUST AND UNREASONABLE RATES

We think it fair to say that the power to establish conditions precedent to the authorization of a rate increase is implicit in the power of the Commission to deny (or defer) a rate increase altogether, and the concomitant power of the Commission (established by Section 15a(2) and the National Transportation Policy) to consider adequacy of the service rendered as a factor in its decision whether rates are just and reasonable.[27]

We do not mean by this that the Commission has the power to impose *any* condition, no matter how intrusive upon the ordinary prerogatives of management and no matter how unrelated to whether the rates are just and reasonable. The Commission's authority in this regard is limited by a requirement that

[27] If enacted into law, Section 205 of the Railroad Revitalization and Reform Act of 1975 would make even clearer the authority of the Commission to consider the maintenance needs of the railroads when establishing rates. Section 205 would make the present Section 15a(2) inapplicable to railroads and would add a new section, 49 U.S.C. 15a(4), which would provide:

"With respect to common carriers by railroad, the Commission shall, within 24 months after the date of enactment of this paragraph, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise to the extent appropriate and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit and/or return on capital employed in the business, which revenue levels should provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure

the conditions be related to the reasonableness of the rates in issue. There may be other limitations as well. We need not explore that possibility here, for conditions of the sort involved in this case are within the bounds of the Commission's power, whatever those bounds may be.

The railroads themselves have acknowledged that the conditions established by the Commission are intimately related to its power to suspend proposed changes in rates. The railroads sought to increase rates to an extent that was not justified by recent increases in operating costs. The railroads argued that the additional increase was justified by their need for funds with which to perform deferred maintenance and make delayed improvements to track and other facilities. The Commission has done no more than to ensure that the railroads will put the new revenues to the purposes that they asserted would justify allowing them to collect those revenues. In short, the conditions simply hold the railroads to their own representations in order to make sure that the rates collected are just and reasonable in relation to the service rendered.

the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation. Such revenue levels should insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels."

This section, however, like the current Section 15a(2), provides no explicit answer to the question whether the Commission can impose conditions in order to ensure that the revenues are used for the purpose that makes their collection just and reasonable.

The intimate relationship between the Commission's conditions and its ratemaking powers is confirmed by the manner through which the expenditure controls came into being and are enforced. The Commission did not enter an *ex cathedra* order directing the railroads to invest entrepreneurial capital in a particular way. It did no more than set forth conditions for the nonsuspension of rates—conditions that the Commission deemed necessary to the reasonableness of rates proposed by the carriers. The carriers were not called upon to attract or invest any of their own capital; the conditions pertain only to the expenditure of additional funds they will collect from shippers. The carriers were not compelled to undertake any maintenance or improvements; they were required to do so if and only if they increased their rates by more than the three percent that was justified by increases in costs. And the carriers were required to devote to maintenance and improvements only the sums so collected.

Not only were the carriers free to decline to increase their rates—and thereby to avoid any controls upon their expenditures—but also they were at liberty to object to the Commission's invitation to file new tariffs subject to restrictions upon use of the revenues derived from the increases.[28] If the railroads had declined to refile, the Commission probably would have suspended their proposed tariffs. Since, under Section 15(7), the

[28] Chessie was not required to join the other railroads in the cancellation and refiling. It could have exercised its right (see 49 U.S.C. 5b(6)) to file independently. See *Ajayem Lumber Corp.* v. *Penn Central Transportation Co.*, 487 F. 2d 179 (C.A. 2).

maximum period of suspension is seven months, the carriers would have been free thereafter to increase their rates without regard to the Commission's views concerning how the revenues should be used.[29]

Finally, the Commission left to the carriers' management full discretion over how the revenues would be spent, within very broad outlines (J.S. App. 81a). Each railroad remains free to establish priorities among types of maintenance and improvements, and to devote the revenues from *Ex Parte 305* to projects of its own choosing. The Commission exercises no control over particular projects or expenditures. And because even this broad subject-matter control may, on occasion, be unduly restrictive, the Commission has provided that any carrier may apply to use *Ex Parte 305* revenues for purposes other than deferred maintenance or delayed capital improvements. It has been liberal in granting such requests. See J.S. App. 107a–108a.

In sum, the Commission has not attempted here to exercise an unfettered power over management decisions. It has attempted to fulfill the goals set out by Congress in the National Transportation Policy. Its control over expenditures is exercised indirectly,

[29] The Commission then would have initiated a full investigation into the propriety of the rates proposed by the railroads and would have had the authority to declare the proposed rates unjust and unreasonable in the absence of guarantees that the carriers would devote the revenues to the purposes that the carriers asserted justify the increase. In that event, however, the Commission would have held full hearings at which the carriers could have objected to any proposed use restrictions.

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through its power over rates, to achieve improvements in the service rendered in exchange for the rates charged. The Commission has not asserted a broad power over management decisions; the decision regarding why and for what purpose additional funds are required was made by the railroads themselves. It has simply held the railroads to their word.

To the best of our knowledge, the only federal case to consider similar action under a similar statute is *D.C. Transit System, Inc.* v. *Washington Metropolitan Area Transit Commission,* 466 F. 2d 394 (C.A.D.C.), certiorari denied, 409 U.S. 1086.[30] The statute involved there allowed the Transit Commission to set rates based in part upon "the need, in the public interest, of adequate and efficient transportation service" (see 466 F. 2d at 408, n. 98)—a standard functionally identical to that of Section 15a(2). The Transit Commission declined even to consider D.C. Transit's request for a fare increase until D.C. Transit had borrowed substantial sums and invested them to improve its service. The court of appeals sustained the Transit Commission's order, stating that the carrier "is not entitled * * * to a fare raise irrespective of the quality of its operation and service" (*id.* at 409). And, the court went on (*id.* at 411): "Nor is there room for doubting the validity of an order which gives * * * direction [to improve service] concurrently with a grant of a fare increase * * *." See also *United Telephone Co. of Florida* v. *Mayo,* 215 So. 2d 609 (Fla. Sup. Ct.), appeal dismissed, 394

[30] Cf. *In re North American Light & Power Co.,* 170 F. 2d 924 (C.A. 3).

U.S. 995; *State ex rel. Puget Sound Navigation Co.* v. *Department of Transportation,* 33 Wash. 2d 448, 482, 206 P. 2d 456, 475 (an agency's power to suspend rates "necessarily implies the power to allow the tariff to become immediately effective, pursuant to reasonable conditions or limitations"). Other cases to a similar effect are collected in *D.C. Transit, supra,* 466 F. 2d at 408, n. 101; at 409, n. 102; at 411, n. 119.

In *D.C. Transit* the Transit Commission simply denied the rate increase altogether until the carrier had complied with certain conditions. But this power is one more sweeping, and more intrusive upon management's prerogatives, than is the action of the Commission here. In *D.C. Transit* the carrier was required to raise and invest private capital as a precondition to increasing its fares; here the carriers have been allowed to increase their rates first and use the revenue so generated to improve their service.[31] *D.C. Transit* and the state cases upon which it relies thus provide strong support for the Commission's action here.

[31] See Note, *The Duty of a Public Utility to Render Adequate Service: Its Scope and Enforcement,* 62 Colum. L. Rev. 312, 330–331 (1962): "When a utility's financial condition is such that an improvement in service is extremely difficult to achieve under the existing rate structure, to deny a rate increase until service improvements have been made is self-defeating, and rate increases clearly must precede improvement. But there appears to be no reasonable objection to conditioning a presently granted rate increase on future service improvements * * *. * * * Although perhaps this does some violence to the traditional notion that rates should be set solely on the basis of a fair rate of return, it must be recognized that a utility providing inadequate service is breaching a duty to the public and should not be able to secure a rate increase before it has fulfilled its obligation."

As we next discuss, neither the decisions of this Court nor previous decisions of the Commission detract from the force of this analysis.

C. THE CASES RELIED UPON BY THE DISTRICT COURT DO NOT SUPPORT ITS CONCLUSION

The district court discussed several cases that, it thought, established a rule "that the Commission has no general power to control a railroad's expenditures" (J.S. App. 21a).

The first of these cases is *United States* v. *Pennsylvania R.R.*, 242 U.S. 208. The Commission had ordered a railroad to furnish tank cars in sufficient numbers, as part of its service as a common carrier. The Court held that, whether or not railroads had such a duty under the common law, Congress had not authorized the Commission to implement it. This case does not support the district court's decision: it does not involve the Commission's rate or suspension powers. What is more, Congress, evidently dissatisfied with that decision, promptly provided in express terms the powers the Court found wanting.[32]

The second case is *Interstate Commerce Commission* v. *United States ex rel. Los Angeles, supra.* The City of Los Angeles, desiring all of the railroads serving it to share a common treminal, sought to require the Commission to compel the railroads to construct and use such a terminal. The Commission declined, correctly as the Court held. The Court concluded that

[32] See 49 U.S.C. 1(10) to 1(22), added by the Transportation Act of 1920.

the power to compel carriers to construct and use specified facilities could be conferred on the Commission only by express statutory provisions. That case, like *Pennsylvania R.R.*, is far removed from ratemaking. It involved direct control over capital investment—"requisitioning investment of capital of the carriers" (280 U.S. at 70)—rather than indirect control designed to ensure the reasonableness of rates. The Court relied upon this point, observing that in the case before it "the expenditure of a large amount of capital will not bring with it [a] corresponding increase in the railroad revenues" (*ibid.*).

The only other decision relied upon below is *Missouri Pacific R.R.* v. *Norwood*, 42 F. 2d 765 (W.D. Ark.), affirmed, 283 U.S. 249. Missouri Pacific asserted that a state full-crew law was unconstitutional under the Commerce Clause. This Court upheld the law, reasoning that Congress had not so occupied the field that a State was prohibited from setting crew sizes with a view to ensuring safe operations. On its face, *Norwood* has nothing to do with the question presented here.

The district court, however, seized upon language in the district court's opinion in *Norwood*. Missouri Pacific had argued below that state full-crew laws were preempted because the Commission had been given the power to regulate crew size. The district court disagreed, observing that, under the "recapture clause" of Section 15a, the Commission could exercise control over crew size "only through the rate of return allowed * * *. * * * There is no suggestion in the sec-

tion as enacted, in the committee reports or in the congressional debates of any direct control by the Commission of any expenditures of the carriers * * *" (42 F. 2d at 773). If this language were controlling, it would support the Commission's action here, for the Commission has acted indirectly, through its control over rates.

However that may be, we think that this Court's opinion is more instructive. Responding to Missouri Pacific's contention that the employee practices covered by the full-crew law were "practices" within the control of the Commission under various sections of the Act, including Section 15a, this Court wrote (283 U.S. at 257):

> The Act uses the word "practice" in connection with the fixing of rates to be charged and prescribing of service to be rendered by the carriers, but these matters differ widely in kind from the subject covered by the Arkansas laws. That word is deemed to apply only to acts or things belonging to the same class as those meant by the words of the law that are associated with it. *Baltimore and O.R. Co.* v. *United States*, 277 U.S. 291, 300.

This language is inconsistent with the district court's pronouncement that Section 15a "provides control only through the rate of return." More important, it establishes that the word "practice," which appears in Section 15a(1) and is embraced within the term "rates" as used in Section 15a(2), includes not only the "fixing of rates to be charged" but also the "prescribing of service to be rendered by the carriers"

(283 U.S. at 257. That is all the Commission has done here.

Further, as we have pointed out at page 32–36, *supra,* Section 15a was amended after *Pennsylvania R.R., Los Angeles,* and *Norwood* were decided. The "recapture clause" has been repealed and the new language of Section 15a(2) substantially expands the Commission's powers. We submit, therefore, that those cases in no way detract from our argument.

The district court also relied (J.S. App. 18a–19a) upon prior decisions by the Commission itself. In these decisions, the court asserted, the Commission disavowed possession of the power it now has exercised. This is inaccurate. The Commission's prior decisions involved the question whether it has the power, divorced from rate proceedings, to compel carriers to undertake specific acts or make specific investments of their own capital. For example, in *Missouri-Kansas-Texas R.R.* v. *Kansas City Terminal Ry.,* 104 I.C.C. 203, quoted extensively by the court below (J.S. App. 19a), the Commission disavowed any power to restrain a carrier from spending revenues on an allegedly improvident rail operating agreement between the Kansas City Terminal Railway and various other railroads. Here by contrast, there was no effort whatever to instruct the railroads to spend their revenues on any specific project of any description. The Commission's prior cases are immaterial here for the same reasons that *Pennsylvania R.R., Los Angeles,* and *Norwood* are not controlling.

In any event, even if the Commission's prior decisions could be interpreted as disavowing the type of

power now asserted, the Commission is entitled to revise its interpretation of the Act in response to developing conditions in the transportation industry. This Court repeatedly has emphasized that every administrative agency has not only the authority but also the obligation to review its mandate and, where necessary, to reach new conclusions. *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 170–171; *American Trucking Associations* v. *Atchison, Topeka & Santa Fe Ry.*, 387 U.S. 397; *Federal Trade Commission* v. *Dean Foods, Inc.*, 384 U.S. 597, 608–611; *Securities & Exchange Commission* v. *Chenery*, 332 U.S. 194, 202. As the Court wrote in *American Trucking, supra*, 387 U.S. at 416:

> [T]he Commission, faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice. Compare *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947); *FCC* v. *WOKO*, 329 U.S. 223 (1946). In fact, * * * this kind of flexibility and adaptability to changing needs and patterns of transportation is an essential part of the office of a regulatory agency. Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.

The Commission has delineated the circumstances that called for it to assert the power to impose the

expenditure restrictions. It expressed concern over the "inadequacy of the services provided shippers by the respondent railroads," notwithstanding that "during the time rail service deteriorated, rail rates have had to be increased as a result of inflation to cover increased wage, fuel material, and interest costs as well as rising payroll taxes" (J.S. App. 47a). The Commission referred to the undeniable "low level of earnings by the railroad industry which has contributed to the deferral of maintenance of plant and equipment, the postponement of capital improvements, and the depletion of the industry's net working capital" and went on (*ibid.*): "These factors in combination have caused a serious deterioration of rail service and increased expenses due to slow orders, car shortages, derailments, and shortages of locomotives."

It was against this background that the Commission concluded (J.S. App. 47a–48a):

> Our responsibilities under the Act, *inter alia*, section 15a(2), require that we give consideration to "the need, in the public interest, of adequate and efficient railway transportation *service* at the lowest cost consistent with the furnishing of such *service;* and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such *service.*" [Emphasis supplied by the Commission.]

The Commission also stated that the increased revenue "will enable the [carriers] to expend substantially more for maintenance and capital improvements than in recent years" (J.S. App. 48a). This was a sufficient

expression of the Commission's view (and review, if one was needed) of its mandate under the Act.

The Commission could have blocked all increases exceeding three percent by using its Section 15(7) suspension power, explaining that it was doing so because there was no assurance the railroads would spend the additional funds for the only purpose that would justify the increased rates. The Commission was entitled to take a less intrusive course. The railroads, including Chessie, said they needed higher rates and more money for deferred maintenance and capital improvements. The Commission found that higher rates would be just and reasonable only if the additional money were devoted to such ends. The Commission therefore properly allowed the increases to go into effect on condition that the money generated be used for deferred maintenance and capital improvements. It is difficult to perceive why all this is an abuse of power by the Commission and, we believe, it is not.

Chessie's argument to the contrary embodies the proposition that after convincing the Commission to allow the increased rates only because of the railroads' need for money to maintain and improve their facilities, Chessie should be free to spend the fruits of its success in the general revenue proceeding for whatever purpose it sees fit. But under the Interstate Commerce Act the carriers' representations in such proceedings are not to be made solely for the purpose of persuasion and then ignored after achieving their intended result. When the Commission accepted the

railroads'—and the Chessie's—justifications for the higher rates, it had the power to treat those arguments as promises by conditioning the rate increase on the railroads' doing what they said they would.

CONCLUSION

The decision of the district court should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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In The

Supreme Court of the United States

October Term, 1975

No. 75-420

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION,
Appellants,

v.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY, ET AL.,
Appellees.

On Appeal From The United States District Court
For The Eastern District of Virginia

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Appellees.

On Appeal From The United States District Court For The Eastern District of Virginia

BRIEF FOR APPELLEES

QUESTIONS PRESENTED[1]

Chessie increased its general rate structure by ten percent pursuant to Commission authorization which stated that the preponderance of the revenues derived from the increase *should* be used for deferred maintenance and cap-

[1] Appellees, The Chesapeake and Ohio Railway Company, The Baltimore and Ohio Railroad Company and the Western Maryland Railway Company, are hereinafter collectively referred to as Chessie. Appellant Interstate Commerce Commission is hereinafter referred to as the Commission. References to the Commission's Brief are denoted by CB, references to the Appendix of the Commission's Brief are denoted by App., and references to the Jurisdictional Statement are denoted by JS followed by the appropriate page number. The Interstate Commerce Act, 49 U.S.C. § 1 *et seq.*, is referred to as the Act. All emphasis has been added unless otherwise indicated.

ital improvements. Following the effective date of the rate increase, the Commission issued further orders imposing the condition that such revenues *shall* be used only for "deferred maintenance" and "delayed capital improvements." These terms were defined so as to preclude Chessie's use of the revenues for any purpose (including a $300 million capital improvement program previously scheduled and committed) unless advance approval is obtained from the Commission to use the revenues for new and additional capital improvements "over and above those presently undertaken, scheduled or otherwise committed." Thus Chessie is still denied use of these revenues for its previously scheduled $300 million program.

The questions presented are as follows:

(1) Whether the Commission's statutory power to prescribe rates conferred by Section 15(1) of the Act in conjunction with its suspension power under Section 15(7), can be expanded by implication into the power to impose conditions controlling the disposition of carrier revenues.

(2) Whether such conditions when applied to Chessie violate the Act and the National Transportation Policy, and are arbitrary and capricious.

STATUTES INVOLVED

In addition to the Commission's statutory provisions (CB 3-4), Chessie adds Section 15(1) of the Act:

> "That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or

> charge whatsoever demanded, charged or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

STATEMENT OF THE CASE

This is a direct appeal from the final judgment and orders entered on April 22, 1975 by a district court of three judges specially constituted pursuant to 28 U.S.C. §§ 2284 and 2325 (as then in effect), enjoining the Commission from enforcing against Chessie certain provisions of its orders directing how revenues generated from increased rates should be spent.

On April 22, 1974, the nation's railroads, including Chessie, filed a petition seeking Commission approval to publish tariffs implementing a ten percent increase in their freight rates and charges. This proceeding was docketed as *Ex Parte No. 305*.

In general increase proceedings such as the one initiated on April 22, 1974, the Commission acts under its Section 15(1) powers, and in accordance with the guidelines of Section 15a(2) and the National Transportation Policy. The new tariffs are subject to suspension by the Commission for a maximum period of seven months pending its hearing and decision on the lawfulness thereof. The carriers are free to increase their rates up to the maximum allowed by the Commission. Contrary to the Commission's assertion (CB 6-7), so long as the maximum increase in rates authorized by the Commission is observed, it makes no difference that the resulting *revenues* may be higher than those estimated by the carriers or the Commission. The Commission authorizes a *rate* increase not a *revenue* increase although it must consider the carriers' revenue needs and the amount of revenue that will be generated by the rate increase in arriving at its decision. The Commission "may confine its attention in general revenue proceedings almost entirely to the need for revenue . . . ." *Aberdeen & Rockfish R.R.* v. *SCRAP*, 422 U.S. 289, 314 (1975).

In their April 22nd petition, the railroads described the need for the increase. It was also documented in supporting statements filed by executives of individual railroads and industry association personnel. The industry's petition stated that the carriers had earned a rate of return on net investment in 1973 of only 3.08 percent, ranking the industry next to last among 70 industrial groups. (App. 117.) The petition stated further that approval of the new rates would

increase the industry's rate of return to 5.27 percent, but the industry would remain near last place in terms of the rate of return of all major corporate groups. (App. 118.)

The railroad's petition and the accompanying statements cited a need for additional revenues to strengthen their financial situation and thus enable them to increase their capital outlays and upgrade maintenance.[2] However, the industry resisted suggestions by some shippers that the use of their new revenues be so restricted. The railroads' chief economist, W. F. Betts, in Reply Verified Statement No. 1, advised the Commission in response to such suggestions, that the railroads, despite their poor earnings record, had voluntarily endeavored to improve their property. He testified that the railroads had increased their borrowing to finance needed improvements "at ever higher interest rates" from an aggregate of approximately $10.4 billion at the end of 1966 to $11.6 billion at the end of 1973. During this period, the industry invested over $9.3 billion in their transportation property which is over $400 million more than they generated from net income and depreciation charges and $3.5 billion more than their retained cash flow after dividends. (Railroads' Reply Statement No. 1, Affiant W. F. Betts, pp. 19-21.)

Throughout the *Ex Parte No. 305* proceedings in support of the increase, Chessie made no representations that the additional revenues would be spent in any particular manner or upon any capital improvement or increased maintenance programs. The only filings in the initial stages of *Ex Parte No. 305* by Chessie representatives were income account schedules which indicate that Chessie's operating expenses,

[2] The railroads' representations were many: increased operating costs (App. 102-104), increased cost of borrowed capital (App. 103, 106), severely depressed rate of return on net investment (App. 104), the need to modernize and expand capacity (App. 107), and the general burden of inflation (App. 118).

a figure that includes maintenance of way and equipment, would remain the same *whether or not* the Commission authorized the rate increase. (App. 139-154.)

On June 3, 1974, the Commission entered an order that approved the filing by the railroads of a new tariff embracing a ten percent increase. The order did *not* provide that most of the increase "must be spent on deferred maintenance and delayed capital improvements" as the Commission contends. (CB 10.) Instead, it stated that the carriers "should" spend the additional revenues on "capital improvements" and "deferred maintenance of plant and equipment."[3] In contrast to the precatory language employed in this paragraph, the Commission in other paragraphs of its June 3rd order utilized the mandatory verb "shall" to direct the carriers to file certain reports concerning the extent of deferred maintenance, past and proposed capital spending, estimates concerning the amount of additional revenues to be derived from the rate increase, and the manner in which they were to be employed. (JS 45a-47a.) Commission Vice Chairman O'Neal filed a separate opinion in which he characterized the paragraph of the Commission's June 3rd order dealing with application of the revenues as an "admonition" and called for sanctions to be certain that the desired expenditures were made. (JS 54a.)

By the spring of 1974, Chessie had embarked upon a $300 million capital improvement program which satisfied the Commission's exhortations. Accordingly, along with the rest of the carriers it proceeded to increase its rates effective June 20, 1974.

On July 18, 1974, the Commission entered its second order in *Ex Parte No. 305*. (JS 55a-76a.) This order *for the first*

[3] This is over and above a three percent maximum designed to cover the cost of increased materials and supplies.

time notified Chessie that it must spend its newly-acquired revenues solely upon delayed capital improvements and deferred maintenance as defined in this new order. The term "deferred maintenance" as used in the July 18th order was defined to be "accrued deterioration" in a railroad's plant or equipment, which has rendered its services to shippers "partially or wholly inadequate and/or has resulted in diminishing the railroads' competitive ability." "Delayed capital improvements" were defined to cover only those which were "actually planned" but not undertaken because "funding or financing was not, or projected to be, available through June 30, 1975." (JS 56a.)

Another new condition imposed by the Commission in its July 18th order was that the revenues were required to be segregated in a separate reserve fund unavailable for any purposes other than those just mentioned. (JS 64a-66a.)

Chessie filed a petition for reconsideration, stating that its pending $300 million capital improvement program did not qualify under the Commission's July 18th order. (App. 222-226.) Further, Chessie pointed out that in view of its strong financial position, no project ever scheduled on Chessie could qualify for *Ex Parte No. 305* funds because funding for Chessie, a relatively prosperous system, was always available. Chessie stated that its services were adequate, and that it had no "deferred maintenance" as that term was defined in the order. Accordingly, Chessie requested that it be permitted to use the funds for any "valid corporate purpose," which modification would permit it to use the funds, as it intended, for its capital improvement program. (App. 226.)

By order of August 9, 1974, the Commission denied Chessie's petition. (JS 77a-84a.) The order specifically reserved to management the determination of the extent to

which the defined conditions of deferred maintenance and delayed capital improvements exist in respect of their properties. (JS 81a.) However, the Commission did not change its definitions of "delayed capital improvements" or "deferred maintenance," still defined as projects that had to be deferred because funding was not available or that had diminished the railroads' services and/or competitive stance. Consequently, Chessie still remained ineligible.

Chessie then resorted to its judicial remedies filing suit below on August 15, 1974. (App. 4-14.) On August 18, 1974, Chessie obtained a temporary restraining order against enforcement of the conditions. (App. 30-33.)

On October 3, 1974, in response to a petition on behalf of railroads other than Chessie, the Commission entered an order permitting railroads having neither deferred maintenance nor delayed capital improvements to seek Commission approval to use unexpended *Ex Parte No. 305* funds for "new and additional capital improvements." (JS 104a.) These were defined as projects over and above those *presently* undertaken, scheduled or committed. (JS 102a-103a.)

Chessie amended its Complaint in the district court attacking the October 3rd order, pointing out that its $300 million capital improvement program undertaken before the October 3rd order was still ineligible. (App. 34-44.)

On April 22, 1975, the district court enjoined enforcement of those portions of the Commission's orders that limited the use of the revenues to projects selected and defined by the Commission. After reviewing the pertinent statutory language and the relevant decisions, Circuit Judge Butzner for a unanimous three-judge district court concluded

> ". . . that Congress has not authorized the Commission to control a carrier's expenditure of funds as a condition to withholding the suspension of rates." (JS 22a.)

The Court did not enjoin enforcement of that portion of the Commission's July 18th order which imposed the reporting requirements. The case was remanded to the Commission for further proceedings consistent with the opinion of the district court.

SUMMARY OF ARGUMENT

I.

Introduction

The Commission for the first time in its history assumed direct control over railroad expenditures by requiring the carriers to confine their use of the *Ex Parte No. 305* revenues to projects defined by the Commission as "delayed capital improvements" and "deferred maintenance." It did so by an order entered July 18, 1974—a date subsequent to the effective date of the rate increase.

This is a most serious and far-reaching step, for the authority to decide the purposes and amounts of expenditures covers the whole scope of management. If the Commission has the authority to direct expenditures for maintenance and improvements, it may, in principle, also control the amounts expended for wages, salaries, dividends or any other purpose. If the power asserted by the Commission below is sustained, the Commission will in practical effect have substituted itself for the boards of directors and officers of every railroad in the country. The July 18th order left Chessie no freedom of choice. It was locked in by the Commission's radical departure from an advisory position over carrier expenditures to one of command. However, Chessie, contrary to the Commission's view of the law, did not have to accept illegal conditions as a condition for retaining an otherwise justifiable increase. It was free to challenge the

illegality of the Commission's asserted power to impose conditions, while at the same time retaining the benefits of the order. *United States* v. *Chicago, Milwaukee, St. Paul & Pacific R.R.*, 282 U.S. 311, 328-331 (1931).

II.

The Statute Provides No Power To Impose The Conditions Here At Issue

For this new grant of power the Commission by novel divination cites Section 15a(2) as added by the Transportation Act of 1920 (Act of February 28, 1920, ch. 91, 41 Stat. 456 *et seq.*), and as amended by the Emergency Railroad Transportation Act of 1933 (Act of June 16, 1933, ch. 91, 48 Stat. 217 *et seq.*), as well as the National Transportation Policy (Act of September 18, 1940, 54 Stat. 899). These sections have never before been cited for such a result and indeed the Commission concedes in its brief that no section of the Act provides an "explicit answer" to the question of its asserted power. (CB 37.) Rather it rests its case upon an "implicit authorization" said to be conferred by these sections. (CB 23.)

This is a leap across the boundaries of the statute. Section 15a(2) adds nothing to the Commission's power to set rates; it only mandates consideration of particular factors in the "exercise of its power [conferred by Section 15(1)] to prescribe just and reasonable rates." As the district court found:

> "Never before has the Commission claimed that this section [15a(2)] expands its rate-making power to embrace control over the expenditure of a carrier's revenue." (JS 18a.)

The rate-making power of the Commission (§ 15(1)), which is the substantive provision under which the Commission acted in *Ex Parte No. 305*, is conferred in terms that

reach only the determination of the rate to be charged. There is no hint in the words of the Act or in prior decisions that the power reaches beyond that point to the disposition of the funds received from service pursuant to the tariff. In short, revenues once collected are the property of the carrier, to be used as its management may decide.

The Commission's lack of power to control revenues is made doubly clear by the 1933 repeal of the Recapture Clause and the related carrier in-house reserve fund clause, the only provisions of the Act that in any way dealt with the disposition of carrier revenues. Those provisions commanded in explicit terms that excess revenues be held by the Commission or the carriers in reserve accounts earmarked for special uses. This is the goal of the Commission in *Ex Parte No. 305*, but it lacks any statutory mandate to achieve its purposes.

III.

The Cases Confirm The Commission's Lack Of Power To Control Expenditures

In the light of the statutory scheme that confers upon the Commission the authority to set rates but which reserves to management control over the resulting revenues, it is not surprising that the Commission can cite no decision which supports its usurpation of power. To the contrary, the decisions of this Court "unmistakenly establish that the Commission has no general power to control a railroad's expenditures." (JS 21a.) *United States* v. *Pennsylvania R.R.*, 242 U.S. 208 (1916); *ICC* v. *United States ex rel. Los Angeles*, 280 U.S. 52 (1929). There are also a host of Commission decisions disclaiming any authority over carrier expenditures as well as repeated representations to the same effect by the Commission to the Congress. (Cases cited p. 18, n.5 *infra*.)

IV.

None Of The "Factors" Advanced By The Commission In Support Of The Power Here Asserted Has Any Validity

The Commission seeks to overcome its lack of statutory power to impose the orders in issue, and the contrary judicial and agency decisions by arguing that there are six "factors" said to justify the power here. (CB 23-24.) It concedes that if one or more such factors were absent, the case might stand in a different light. (CB 24.) None of these factors has any validity.

1. Contrary to the Commission's assertion that the conditions are intimately related to its power to set just and reasonable rates because the conditions act to improve the quality of service, the actual effect of the conditions is to prevent Chessie's use of the funds for the improvement of service and thus to militate against the justness and reasonableness of the increased rates.

2. The Commission asserts that the power to prescribe the use of revenues should be sustained because it is here exercised only *indirectly*, and because it has not attempted *directly* to control management decisions. The complete answer is provided by this Court's decision in *T.I.M.E., Inc.* v. *United States*, 359 U.S. 464, 475 (1959), that the Commission may not accomplish indirectly what it lacks authority to do directly.

3. The Commission asserts that the power should be sustained because the orders do no more than direct the carriers to put the increased revenues to a use of the carriers' own choosing. But it certainly was not Chessie's "own choosing" to impound these revenues in a sterile fund which cannot be used for any productive purpose. Moreover, such a requirement is in plain violation of the Commission's mandate under Section 15a(2) and the National Transportation Policy.

4. The Commission contends that the asserted power should be sustained because its orders leave to "management complete discretion concerning how it will expend the revenues within the broadest subject-matter constraints." (CB 24.) But the record contradicts this contention, as applied to Chessie. On the contrary, rather than leaving Chessie's management "complete discretion concerning how it will expend the revenues," the conditions require Chessie to place these funds in a sterile, useless account unavailable for any purpose.

5. The Commission contends that the asserted power should be sustained because the conditions do not require Chessie "to acquire or invest any of its own capital." (CB 24.) Even if one were to assume *arguendo* that the revenues are not Chessie's "own capital" (an extreme proposition), this contention still misses the point altogether. The controlling point is that the conditions deny Chessie the right to invest these revenues, and that for every dollar so denied Chessie has to spend "its own capital" directly out of its treasury for the maintenance and improvement of its plant and facilities.

6. By its final contention that the asserted powers should be sustained because Chessie could avoid the conditions by declining to increase its rates, the Commission is telling Chessie to "take it or leave it." The short answer is that the Commission cannot forego its power to suspend as a trade-off for its imposition of unlawful conditions. Such a boot-strap device could be utilized to support any power asserted by the Commission, however unlawful.

V.

The Conditions Violate The Act And The National Transportation Policy And Are Arbitrary And Capricious

The conditions must not only be annulled because of the Commission's clear lack of power to impose them, but also because as to Chessie they are patently arbitrary, capricious and in direct contravention of the policy guidelines contained in Section 15a(2) and the National Transportation Policy—the very sections upon which the Commission relies to sustain its power.

As Chessie pointed out to the Commission in its petition for reconsideration of the July 18th order (App. 222-226), it had no financing problems and in consequence never deferred worthwhile projects designed to improve its transportation services. Thus, its *Ex Parte No. 305* revenues were unusable under the Commission's orders. Most significantly they could not be applied to a $300 million capital improvement program upon which Chessie had already embarked. The later orders of the Commission did nothing to remedy this impasse.

Indeed, had it not been for the protection of the temporary restraining order and the judgment below, no portion of Chessie's newly-acquired revenues could have been used for maintenance and for such capital improvement program. The conditions penalize Chessie for *not* having deferred maintenance or delayed capital improvements.

Chessie does not quarrel with the Commission over the need for additional improvements if the railroads are to provide adequate and efficient transportation service, the goals of both Section 15a(2) and the National Transportation Policy. In fact, Chessie's submissions, filed with the Commission under the reporting requirements of the July 18th order, establish that during the first three quarters of

1975, Chessie, without legal compulsion, has expended for all types of maintenance and capital improvements almost *nine times* the amount of additional revenues received from the ten percent rate increase. (App. 238-444.)

However, the Commission, while recognizing the need for additional revenues to promote an adequate and efficient railroad system, has acted to deny Chessie the opportunity to use the revenues for any purpose—an arbitrary and capricious result completely contradictory to congressional intent as embodied in Section 15a(2) and the National Transportation Policy.

ARGUMENT

I.

The Commission Has No Statutory Power Express Or Implied To Condition The Manner In Which Railroads May Spend Their Revenues

The Commission's justification for implying the power rests upon three sections of the Act—Section 15a(2) as it first appeared in the Transportation Act of 1920 and as amended in 1933, the National Transportation Policy enacted in 1940 and Section 15(7), the suspension section. Its arguments for implying the power may be refuted simply by a discussion of the background and legislative history of these sections.

In the Transportation Act of 1920, the Commission was granted certain new powers designed to foster an adequate national rail system. First, to end abuses and financial disruptions caused by inter-carrier competition, it was for the first time authorized to fix the exact rate to be charged by the carrier for its transportation services. Prior to this time, the Commission's rate fixing powers had been limited to the prescription of maximum reasonable rates. (Act of

June 29, 1906, Hepburn Act, ch. 3591, § 4, 34 Stat. at 589.) Its powers were now expanded so that:

> ". . . whenever . . . the Commission shall be of opinion that any individual or joint rate . . . is or will be unjust or unreasonable . . . , the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate . . . to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged . . . ." (Act of February 28, 1920, ch. 91, § 418, 41 Stat. at 484, codified as 49 U.S.C. § 15(1).)

Second, as another means of combating financial inequality, Congress enacted the Recapture Clause which, together with its companion carrier in-house reserve fund clause, were the *only* provisions in the Transportation Act of 1920 dealing with the involuntary disposition of carrier revenues. The Recapture Clause provided that:

> ". . . any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States." (*Id.*, § 422, 41 Stat. at 489.)

One half of such excess was to be paid to the Commission. The remainder was to be placed in an in-house reserve fund, up to five percent of total value, and it could be used only for designated purposes.[4]

Section 15a(2) was added by the Transportation Act of 1920. It was not added to expand the powers of the Commission over revenues beyond those granted in the section

[4] In the passage of the Recapture Clause, Congress did the very thing which the Commission attempts to do today under its rate-making function, *i.e.*, create a special fund from the revenues of the carriers earmarked for certain purposes. But Congress did so in clear and explicit language, long since repealed.

just mentioned. Rather, it was added as a concomitant to the new powers granted in the 1920 Act to prescribe rates, *i.e.*, Section 15(1). It merely declares the public policies that shall be taken into account by the Commission in the exercise of its powers to set rates. Thus, the Commission

> ". . . shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation . . . ." (*Id.*, § 422, 41 Stat. at 488.)

By 1933 it was realized that the machinery created by the 1920 Act to build up an adequate national rail system was not working and that the carriers in the economic climate then prevailing and for the foreseeable future would not earn excess income nor realize fair rates of return. Congress, therefore, abandoned the fair return on fair value rate-making criterion and repealed the recapture provision and the related in-house reserve fund.

For the new rate-making criterion, Section 15a(2) was amended to provide:

> "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." (Act of June 16, 1933, ch. 91, § 205, 48 Stat. at 220.)

With the 1933 repeal, there came to an end, distinctly and decisively, the only effort by Congress to control the disposition of revenues that had been earned by the carriers. The Commission was left with no authority in that regard.

The Commission concedes that Section 15a(2) *"provides no explicit answer"* to the question of the Commission's powers over the disposition of carrier revenues. (CB 37, n. 27.) But it argues that the 1933 amendments to that section gave the Commission greater flexibility than it had possessed under the 1920 version of the statute and that the new language "substantially expands" its powers. Therefore, the Commission concludes no attention should be paid to this Court's decisions in *ICC* v. *United States ex rel. Los Angeles,* 280 U.S. 52 (1929); *United States* v. *Pennsylvania R.R.*, 242 U.S. 208 (1916), and to the Commission's decisions acknowledging no power over carrier expenditures.

But the Commission's reliance on Section 15a(2), as amended, is entirely misplaced. It still simply mandates consideration of certain factors in the *exercise of the power conferred in Section 15(1) to prescribe just and reasonable rates.* It does not expand the power to prescribe rates into the power to prescribe the uses to which the carriers' revenues are to be applied.

Numerous decisions of the Commission subsequent to the 1933 change in Section 15a(2) have disclaimed any authority over carrier expenditures.[5] Further, there have been repeated representations by the Commission to Congress

[5] *Joseph A. Goddard Realty Co.* v. *New York, Chi., and St. L. R.R.*, 229 I.C.C. 497, 502 (1938); *Jacksonville Pt. Term. Oper. Assn* v. *Alabama, Tenn. & N. R.R.*, 263 I.C.C. 111, 116 (1945); *Oliver Mfg. Supply Co.* v. *Reading Co.*, 297 I.C.C. 654, 658 (1956); *Adequacies-Passenger Service-Southern Pacific Co.*, 335 I.C.C. 415, 420-424 (1969); *Duralite Co., Inc.* v. *Erie Lackawanna Ry.*, 339 I.C.C. 312, 314 (1971); *Increased Freight Rates, 1970 and 1971*, 339 I.C.C. 125, 180 (1971).

since 1933 disavowing any authority to order the purchase or repair of equipment.[6]

The Commission would ignore previous disclaimers of authority over railroad spending by arguing that it may alter its past interpretations in the light of changed conditions citing *American Trucking Associations* v. *Atchison, Topeka & Santa Fe Ry.*, 387 U.S. 397 (1967). (CB 46.)[7] In *American Trucking,* the Commission reversed its earlier view that a trucking company could not utilize railroad trailer-on-flatcar service (TOFC) without the railroads' consent. Instead, it said it could do so under the anti-discrimination provisions of Sections 2 and 3(1) of the Act. In upholding the Commission, this Court noted that the Commission's order was "practically a paraphrase of § 2 of the Act," (387 U.S. at 407), and concluded that regulatory agencies "within the limits of the law" may adapt their rules to meet changing needs in transportation. (387 U.S. at 416.) *American Trucking* would be significant only if the Commission's orders in *Ex Parte No. 305* paraphrased a provision of the Act. But they do not.

It is one thing to say an administrative agency can change its regulatory policies in the light of changes in conditions and shift its emphasis from one section of the Act to another. However, where, as here, there is an abrupt and most sweeping departure from the agency's view of its jurisdiction and

[6] *ICC 86th Annual Report to Congress* (1972) at 23; *ICC 84th Annual Report to Congress* (1970) at 9; *ICC 70th Annual Report to Congress* (1956) at 83; *ICC 61st Annual Report to Congress* (1947) at 128-130; *ICC 56th Annual Report to Congress* (1942) at 15-21 and 123-129.

[7] The Commission in the past has recognized that current economic conditions cannot serve as an excuse for the assumption of novel powers. It has stated that no "jurisdiction is created by changing times or carrier conduct." *Adequacies-Passenger Service-Southern Pacific Co.*, 335 I.C.C. 415, 432 (1969).

powers, a view held throughout its history, and where such departure rests solely on a claimed implication of power, other legal principles come into play. It is well settled that a long-standing administrative construction, accepted over the years without change by Congress, is binding on the agency *New York, New Haven and Hartford R.R.* v. *ICC*, 200 U.S. 361, 401-402 (1906). In consequence, the agency will not be permitted to reverse that construction. *United States* v. *Leslie Salt Co.*, 350 U.S. 383, 396-397 (1956).

This rule is most strikingly applicable here because the Commission is at the same time seeking new legislation, which Congress has so far declined to enact, giving it authority over the disposition of railroad assets. The Commission's orders here attempt to assert such authority. But the Commission plainly recognizes that it has no such power, saying to Congress that it has

> ". . . no powers under the provisions of the Interstate Commerce Act to control or prohibit the use of carrier assets to finance or otherwise facilitate nontransportation investments." *(Letter of Chairman Stafford, dated July 2, 1971, to Senator Vance Hartke, Chairman, Surface Transportation Subcommittee of the Senate Committee on Commerce* at 10.)[8]

Because it has no such power, the Commission has asked Congress to enact bills that would give it such authority. S. 2460, 93rd Cong., 1st Sess. (1973); H.R. 11092, 93rd Cong., 1st Sess. (1973). But the Congress has so far refused to do so. The Commission cannot create such authority by implication. *ICC* v. *Cincinnati, New Orleans and Texas Pacific Ry.*, 167 U.S. 479, 494-495 (1897).

Finally, the Commission says that if Section 15a as originally enacted in 1920 did not cloak the Commission with

[8] *See also ICC 85th Annual Report to Congress* (1971) at 90-91.

authority over carrier spending and if the 1933 amendment of that section did not give it such authority, then that authority was surely conferred by the passage of the National Transportation Policy in 1940. However, the National Transportation Policy, while it may be the yardstick by which the Commission's actions are measured, does not enlarge its substantive powers. *Arrow Transportation Co.* v. *Southern Ry.*, 372 U.S. 658 (1963); *Cotton From Memphis and Helena to New Orleans*, 273 I.C.C. 337 (1948). This interpretation accords with Congressional intent:

> ". . . [the National Transportation Policy] makes no change in the rate-making rule now contained in section 15a of the Interstate Commerce Act, except broadening it to apply to all carriers. Section 15a is now applicable only to rail carriers." (S. Rep. No. 433, 76th Cong., 1st Sess. 5 (1939).)

If the Commission is allowed to interpret the statement of policy as permitting it to do *anything* it deems desirable in the field of transportation, the bounds of power established by Congress will have been destroyed. The National Transportation Policy would then be a source of limitless power. However, that Section 15a(2) and the National Transportation Policy do not authorize conditions governing the use of carrier revenues is clear from a comparison of the general nature of those declarations with the specific tenor of those that fix authority to impose conditions. Such power is found, for example, in Sections 1(20), 5(2)(b) and 20a of the Act. In the face of such explicit authority, any argument that power over revenue is conferred by implication is untenable.

As for the Commission's suspension powers under Section 15(7), we do not understand that it is the Commission's contention that that section standing alone vests power in

the Commission to control railroad spending. Rather, it authorized the Commission to defer the effective date of a *rate* change for seven months pending its determination as to reasonableness. There is no provision express or implied in Section 15(7) that could be interpreted as conferring power on the Commission to control spending.[9]

II.

There Are No Judicial Precedents Supporting The Commission's Arrogation Of Power Over Carrier Spending. All Decisions On The Subject Militate Against The Exercise Of Such Powers.

The Commission's discussion of the judicial precedents said to support its actions will be of no help to this Court. It reviews general language in *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R.R.*, 257 U.S. 563 (1922); *New England Divisions Case*, 261 U.S. 184 (1923); and *Dayton-Goose Creek Ry.* v. *United States*, 263 U.S. 456 (1924), for the proposition that the Transportation Act of 1920 represents a new departure from old regulatory policies designed to create an adequate railroad system. As *New England* shows, control was found only in the sections of the 1920 Act dealing with recapture of excess income, and the carrier in-house reserve fund. *Dayton-Goose Creek* merely upheld the constitutionality of the Recapture Clause. It demonstrates that it took an Act of Congress (long since repealed) to establish a carrier in-house reserve fund and to specify the sole uses to which the carrier could apply such fund. Here the Commission at-

[9] If the Commission, in fact, is arguing that the suspension power alone can be converted into the power to impose conditions, its position has no support whatever in the legislative history of the section. It does no more than grant the power to suspend while an investigation is made as to the reasonableness of the rate change. (Committee on Interstate and Foreign Commerce, H. Rep. No. 923, 61st Cong., 2d Sess. 3-4 (1910).)

tempts to attain the same goals not by Congressional authorization but by administrative fiat. Finally, the *Wisconsin* case merely involved the Commission's newly-acquired powers to adjust intrastate passenger fare levels.

The only case decided by this Court that the Commission seriously advances as authority for its power is *Florida* v. *United States*, 292 U.S. 1 (1934). This decision was not cited by the Commission below to support its asserted powers. It is easy to understand the omission, for *Florida* does not in any manner stand for the proposition that the Commission may dictate carrier spending. The proceeding arose under Section 13(4) of the Act which granted the Commission power to adjust intrastate freight rates when they were at levels so low as to cast an undue burden on interstate commerce. This Court simply held that repeal of the Recapture Clause did not affect the Commission's Section 13(4) authority. But this Court did not say that the 1933 changes in Section 15a enlarged the Commission's rate-making powers so as to permit the Commission to conrtol carrier spending.

The Commission also relies upon three lower court cases, none of which involves an interpretation of the Act. Primary reliance is placed upon *D. C. Transit System, Inc.* v. *Washington Metropolitan Area Transit Commission*, 466 F.2d 394 (D.C. Cir.), *cert. denied*, 409 U.S. 1086 (1972). That decision is inapposite. It holds that a local regulatory commission may deny a rate increase to a bus company until the company first obtains external equity financing. The *D. C. Transit* case does not constitute authority for the principle that the lawfulness of an increase can be made to depend upon the future satisfaction *vel non* of conditions controlling the use of the newly-generated revenues. No increase was granted and no such conditions were imposed.

The Commission also refers to *United Telephone Co. of Florida* v. *Mayo*, 215 So.2d 609, *appeal dismissed*, 394 U.S. 995 (1968) and *State ex rel Puget Sound Navigation Co.* v. *Department of Transportation*, 33 Wash.2d 448, 206 P.2d 456 (1949). Neither of these cases is apposite. Neither State Commission attempted to control the expenditure of revenues derived from a rate increase. In *United Telephone*, a state agency ordered that service improvements be made before an increase in rates would be approved. In *Puget Sound*, a state agency merely said that if a temporary increase in rates was later found to be unreasonably high, the carrier would refund the difference.

Against the Commission's strained attempt to read into the Act by implication powers that do not exist, may be marshalled this Court's decisions which hold that the Commission cannot be permitted to exercise authority except on the basis of clear and unequivocal statutory commands. *ICC* v. *Cincinnati, New Orleans and Texas Pacific Ry.*, 167 U.S. 479 (1897); *Texas* v. *Eastern Texas R.R.*, 258 U.S. 204 (1922); *T.I.M.E., Inc.*, v. *United States*, 359 U.S. 464 (1959).

Chessie submits that this Court's decisions in *ICC* v. *United States ex rel Los Angeles*, 280 U.S. 52 (1929) and *United States* v. *Pennsylvania R.R.*, 242 U.S. 208 (1916), as well as the decision in *Missouri Pacific R.R.* v. *Norwood*, 42 F.2d 765 (W.D. Ark. 1930), *aff'd* 283 U.S. 249 (1931), establish that the Commission has no general power to control railroad revenue. There has been no clear, unequivocal statutory command.

In the *Los Angeles* case, the Commission claimed it had no power to compel railroads to build passenger stations. In the *Pennsylvania R.R.* case, the Commission denied any authority to order railroads to buy tank cars. This Court sustained the Commission in both instances, saying:

> "A proper statute would seem to require detailed directions, and we should expect the intention to be manifested in plain terms and not to have been left to be implied from the varied regulatory provisions of uncertain scope." (280 U.S. at 69.)
>
> "[I]f Congress had intended such consequence . . . it would not have left its intention to be evolved from obscure language but would have put it in explicit declaration and with notice and time for accommodation to it." (242 U.S. at 231.)

And, as the *Norwood* decision held, the Commission's power to grant or deny rate increases does not imply a power of control over railroad expenditures, 42 F.2d at 773.[10]

We have already referred to the numerous Commission decisions disclaiming power over carrier spending. As noted,

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[10] The Commission argues that in affirming the district court's decision in *Norwood*, this Court held that the term "practice" as used in Section 15a(1) embraces not *only* the setting of rates but the prescribing of service to be rendered by the carriers. The "practices" referred to in Section 15a(1) are the type of practices referred to in Section 15(1) of the Act such as the "individual or joint classification, regulation, or practice [that] is or will be just, fair and reasonable . . . ." This, of course, has nothing whatever to do with control over the expenditure of carrier revenues derived from a general rate increase. In quoting this Court's opinion in *Norwood* (CB 44), the Commission closed the quote much too soon, for the Court goes on to say:

> "The plaintiff further supports its contention by the claim that the Commission is authorized to regulate the expenditures of carriers. That claim is based on the provisions of the act empowering the Commission to regulate rates to be charged . . . and to ascertain rate levels that will yield the fair return provided for. But manifestly there is no similarity between determining what items of expense properly are to be taken into account in calculations made for such purposes and in the prescribing of the number of employees or the compensation to be paid them." 283 U.S. at 257-258.

the Commission's consistent view has been that it lacks such power.

The Commission says that these judicial and agency cases may be discounted for they involved direct control over carrier spending, divorced from rate proceedings. The Commission says it can invoke the power in rate proceedings because "control is exercised indirectly through its power over rates [and it] has not asserted a broad power over management decisions." (CB 48-49.)

The Commission's arguments must fail for two reasons. First, if the Commission lacks direct control over carrier expenditures which is the teaching of the *Pennsylvania R.R.* and *Los Angeles Terminal* decisions, it cannot accomplish the same result indirectly. *T.I.M.E., Inc.* v. *United States,* 359 U.S. 464 (1959).

Second, to label the Commission's action in *Ex Parte No. 305* as only "indirect" control is contrary to the facts. Capital investment is forced into particular categories just as it was attempted to be forced into tank cars and a railroad terminal. There is nothing "indirect" about this prohibition; it is a direct Commission command, a direct assumption of managerial power. The intrusiveness of the claimed power is extreme; its exercise usurps a fundamental management prerogative. In essence, the Commission, in the challenged orders, has commanded that for all railroads, deferred or delayed expenditures must always take priority over new expenditures. Importantly, this command applies without regard to whether "honest, economical and efficient management" would dictate a different result. For example, a railroad having no delayed capital improvements and with its only "deferred maintenance" existing in its fleet of old 50 ton capacity hopper cars would be required under the Commission's orders to repair the old cars with its *Ex Parte No. 305* revenues even though an honest, efficient and economical management decision would dictate the purchase of *new* and more efficient 100 ton capacity cars instead.

For the industry in general, the Commission has restricted the use of a substantial body of funds to narrowly-defined projects. The numerous petitions for relief from these restrictions attest to the difficulties the carriers are having with the orders. (App. 452-502.) The management of the Milwaukee Railroad was permitted to use the *Ex Parte No. 305* funds for general operating expenses only if it treated the transfer of these funds out of the reserve account as a "borrowing" to be repaid later. (App. 477-479.) The management of seven other railroads had to petition the Commission to obtain permission to use *Ex Parte No. 305* revenues to (1) purchase new or used locomotives and cars; (2) repair existing equipment; (3) construct new facilities; and (4) make roadway improvements. (App. 457.) The management of the Richmond, Fredericksburg and Potomac Railroad Company had to obtain Commission permission before using new revenues to purchase fifty gondola cars. (App. 482.) The management of the Sandersville Railroad had to obtain permission to use *Ex Parte No. 305* revenues to help build a new maintenance building and upgrade four miles of track. (App. 475.) The management of the Cuyahoga Valley Railway Company had to obtain Commission permission to use new revenues to buy 20 gondola cars. (App. 497.) Six petitions have been denied. There is no escape from the conclusion that such necessity for Commission approval of expenditures is altogether inconsistent with the statutory scheme.

For Chessie, in particular, the orders would have prevented any use of the funds for any maintenance whatever and for its $300 million capital improvement program had it not been for the action of the district court. These revenues

would have remained in a sterile, useless account unavailable to management.

The far-reaching effect of the Commission's orders cannot be stressed too strongly. Today the Commission has restricted spending to deferred maintenance and delayed capital improvements, narrowly defined. Tomorrow, under the same authority it now asserts, it could designate with particularity the nature of the equipment and facilities on which the funds must be spent—actions contrary to the precedents of the *Los Angeles Terminal* and *Pennsylvania R.R.* decisions.

Nor is it implausible that the Commission could intrude into the area of dividend payments and carrier investment by specifying the amount of carrier revenues that may be used for these purposes. Conceivably, it could dictate the amount and timing of wage increases by requiring segregation of revenues for such purposes.

If such vast and comprehensive powers are to be bestowed on the Commission, it must be through a clear and explicit Congressional mandate and not by agency decree.

III.

The Conditions, By Preventing The Use Of The Revenues For The Purposes Contemplated By The Statute, Are In Direct Contravention Of The Congressional Mandate Under Section 15a(2) and The National Transportation Policy.

The precarious capital posture of the railroad industry is known to all. The Commission makes an extended excursion through the record (CB *passim*) to establish that the nation's railroads require vast infusions of new capital if they are to place themselves in a position to meet the demands placed upon them by an expanding economy. Chessie has no quarrel with this statement of the obvious. But such

capital investment must be in accordance with the statutory scheme which reserves to management the decision as to the purposes to which its revenues will be applied.

The Commission has attempted to overthrow the statutory scheme. The problems created thereby are best illustrated by the fact that its orders bar Chessie from using the *Ex Parte No. 305* revenues for its $300 million capital improvement program. Such a bar is not only unauthorized by the Act but is in direct contravention of Section 15a(2) and the National Transportation Policy, the very provisions upon which the Commission relies.

Under Section 15a(2) and the National Transportation Policy, carrier need is a mandatory consideration for passing on rate change proposals. But the Commission, after finding that the statutory need exists, contravenes these guidelines and ignores its own order by appending conditions which prevent Chessie from using its revenues for the very purposes contemplated by the Act, namely the operation of an adequate and efficient transportation system. Thus, the requirements imposed by the conditions upon Chessie, had it not been for the district court's protection, would have militated against the Commission's justification for the increase. In any event, the justness and reasonableness of the increase cannot be made to depend upon conditions which the Commission has no lawful authority to impose.

IV.

The Commission's Orders Are Arbitrary And Capricious And, Therefore, Are Unlawful Under The Administrative Procedure Act.

Although it devotes a major portion of its brief to a defense of the wisdom of the challenged orders, the Commission states that the sole issue before this Court is the

power of the Commission to make the orders rather than their reasonableness.

> "That is the only issue presented in this case, and it does not depend upon whether the restrictions on the use of the revenues are reasonable, supported by evidence, or otherwise in accord with the standards governing the Commission's exercise of its discretion." (CB 26.)

But Chessie, as appellee, is not confined solely to the issue of power advanced by the Commission. In the district court, Chessie raised issues as to the arbitrary, capricious and unlawful nature of the Commission's orders as applied to Chessie. They are summarized below and compel the conclusion that the Commission's orders violated the requirements of the Administrative Procedure Act. (5 U.S.C. § 706 (1970).)

First. The orders are arbitrary and capricious because they bar the use of the funds for Chessie's capital improvement program. In Chessie's case, such sterilization of the funds demonstrates conclusively that the conditions do absolutely nothing to support the justness and reasonableness of the rates.

Second. As a consequence, except for the relief accorded below, Chessie's shippers would have paid increased rates with no offsetting benefits. (App. 19-21, 225.)

Third. The Commission contends that "[t]he railroads' incentives to scrimp on maintenance would of course survive any revenue increase no matter how large," (CB 22), and that these practices justified the conditions. Chessie's capital spending and maintenance programs belie this claim. As revealed in its quarterly reports to the Commission (App. 238-444), in the first nine months of 1974, Chessie spent over $238 million for capital improvements and maintenance. In the first nine months of 1975, its expenditures for these purposes totaled over $402 million—an increase of

roundly $164 million. In contrast, the rate increase generated only $18.6 million in additional revenues in the first nine months of 1975 after deductions for additional income taxes and increases in the cost of materials and supplies. Thus, without administrative compulsion, Chessie spent almost *nine times* its available *Ex Parte No. 305* revenues in additional improvements and maintenance.

The Commission has no genuine response to these facts. Instead, it makes a *post hoc* attempt to establish that Chessie's new revenues could be utilized under its orders. This contention is nothing more than an attack upon its own record. Subsequent to the July 18th order, Chessie, in its petition for reconsideration, stated that it had no projects within the scope of the Commission's definitions. Such statements in the petition constitute evidence under the Commission's Rules. 49 C.F.R. § 1100.19. There was no evidence in the record to the contrary (other than a letter to the Commission relating to one minor branch line). In now claiming otherwise, the Commission is not only attacking its own record but is also quarreling with its own order. Its August 9, 1974 order stated (JS 81a):

> "[T]he definitions of deferred maintenance and delayed capital improvements . . . reserves to the management of each railroad in the exercise of its proper and prudent managerial functions the determination of the extent to which these conditions exist in respect to their properties."

An agency cannot ignore its own orders. *Service* v. *Dulles*, 354 U.S. 363 (1957); *Accardi* v. *Shaughnessy*, 347 U.S. 260 (1954).

The Commission has advanced nothing to counter the array of facts establishing the arbitrary, capricious and unlawful nature of its conditions when applied to Chessie. They must be set aside for this reason alone, regardless of how the power issue is decided.

CONCLUSION

The Commission's basic position is that it may impose its will upon Chessie by withholding its power to suspend a rate increase on condition that Chessie accept Commission directives as to how the funds shall be spent. But Chessie is not required to acquiesce. Federal courts have the power to annul and enjoin actions of the Commission *"in whole or in part"* (28 U.S.C. § 1336(a)); they may enjoin illegal conditions attached to an otherwise lawful order. *United States* v. *Chicago, Milwaukee, St. Paul & Pacific R.R.*, 282 U.S. 311 (1931).

The judgment below should be affirmed.

Respectfully submitted,

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v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

REPLY BRIEF FOR THE APPELLANTS

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1. Chessie has contended throughout this litigation that it has no "deferred maintenance" and no "delayed capital improvements" (*e.g.*, App. 8–11, 18–19, 36–39). Chessie repeats that contention in its brief (*e.g.*, Br. 2, 7–8, 12–15, 27–31), and a substantial portion of its argument is devoted to demonstrating that this "fact" establishes the illegality of the Commission's action.

Chessie's assertions that it cannot use the revenues it has collected under the Commission's authority in *Ex Parte 305* go not to the existence of the Commission's power to impose conditions but to the wisdom

of the exercise of that power. For purposes of passing upon the extent of the Commission's authority, the Court must assume that Chessie, like other railroads, can expend the funds for the purposes the Commission has prescribed.[1] If the Court sustains the Commission's authority to impose conditions upon the nonsuspension of a revenue increase, it should return this case to the district court so that it can pass upon Chessie's argument that its inability to use the *Ex Parte 305* revenues makes the Commission's action arbitrary and capricious with respect to it.

2. Chessie contends (Br. 20) that the Commission is "seeking new legislation" that would give it the power it has exercised here; Chessie argues that Congress' decision not to enact the proposed legislation demonstrates that the Commission has exceeded its authority. The proposed legislation to which Chessie refers, however, has nothing to do with the present

[1] For the reasons discussed at J.S. 16–17, n. 15, we submit that Chessie's argument that it has no "deferred maintenance" or "delayed capital improvements" is entirely without support. We filed in the district court an affidavit by a Commission auditor describing some of the maintenance needs of Chessie (App. 65–75). Moreover, Chessie could have sought the Commission's permission to apply *Ex Parte 305* funds to its current maintenance program (see J.S. App. 104a, 107a–108a), but it has declined to do so.

Because the district court granted judgment in favor of Chessie without remanding to the Commission to make a finding upon, and without itself resolving, the disputed factual issues, it necessarily viewed all of them (to the extent they are material) in the light most favorable to the Commission. *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144, 157; *United States* v. *Diebold, Inc.*, 369 U.S. 654, 655. Thus, in the present posture of the case, it must be assumed that Chessie can spend the *Ex Parte 305* revenues for permissible purposes.

case. Because the Commission believed that many railroads (of which the Penn Central was the most visible example) were diverting essential railroad revenues to nontransportation investments, it asked Congress to give it the authority to control such diversions. See Interstate Commerce Commission, *85th Annual Report* 90–91 (1971). Authority to control nontransportation investments would be quite different from the power to require railroads to devote increased revenues, collected with the Commission's permission, to the purpose that made their collection just and reasonable. The Commission's lack of the former power implies nothing about the latter authority.[2]

3. Our brief discussed (Br. 17–18; 36–37, n. 27) the Railroad Revitalization and Reform Act of 1975, which was then awaiting transmission to the President. The President signed the bill and it became law on February 5, 1976. Pub. L. 94–210, 90 Stat. 31.

For these reasons, in addition to the reasons set out in our opening brief, it is respectfully submitted that the judgment of the district court should be reversed and the case remanded for further proceedings.

ROBERT H. BORK,
Solicitor General.

ARTHUR J. CERRA,
General Counsel,
Interstate Commerce Commission.

MARCH 1976.

[2] The Commission has informed us that it never has requested Congress to provide it explicitly with the authority that, we have argued, already is implicit in the Interstate Commerce Act.

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In The

Supreme Court of the United States

October Term, 1975

No. 75-420

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION,
Appellants,

v.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY, ET AL.,
Appellees.

On Appeal From The United States District Court
For The Eastern District of Virginia

SUPPLEMENTAL BRIEF FOR APPELLEES

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SUPPLEMENTAL BRIEF FOR APPELLEES

I.

NEWLY ENACTED LEGISLATION

This Supplemental Brief is filed pursuant to Rule 41(5), Rules of the Supreme Court of the United States, to invite the Court's attention to the newly enacted Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. No. 94-210, 90 Stat. 31 *et seq.*), signed February 5, 1976. This makes inapplicable to rail carriers the sections relied

on by appellants to support their argument of implied power and substitutes new provisions as follows:

1. By Section 205, the former Section 15a(2) of the Interstate Commerce Act becomes inapplicable and there is substituted a new Section 15a(4) as follows:

> "(4) With respect to common carriers by railroad, the Commission shall, within 24 months after the date of enactment of this paragraph, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels. No rate of a common carrier by railroad shall be held up to a particular level to protect the traffic of any other carrier or mode of transportation, unless the Commission finds that such rate reduces or would reduce the going concern value of the carrier charging the rate."

2. By Section 202(e), the former Section 15(7) of the Interstate Commerce Act becomes inapplicable and new provisions are substituted as Section 15(8) reproduced in Appendix A hereto.

II.

ARGUMENT

The new Section 15a(4) makes it clear in terms that the Commission's ratemaking power exists only "for the establishment of revenue levels" adequate for the realization of stated policies. The Commission concedes in its Brief that this provides no explicit answer to the question whether the Commission has the power to impose conditions on the use to which carriers may put the revenues they collect (CB 37 n. 27). More than that, the new Act makes it unmistakably clear that, howsoever broad the policies to be considered by the Commission in the exercise of its ratemaking power, the power itself exists only "for the establishment of revenue levels" and does not reach beyond that point to ordering the disposition to be made of revenues that have been collected.

The changes made by Section 15(8) suggest the attenuation of the suspension power rather than any enlargement of it. For example, whereas under the former Section 15(7) the Commission could suspend for seven months a freight rate increase while it investigated the reasonableness of that increase, under the new Section 15(8)(b), the Commission may suspend a freight rate increase of seven percent or less on individual commodities only if it first finds a violation of Sections 2, 3 or 4 or that the carrier has "market dominance." Likewise, the Commission may now suspend a rate decrease only if it finds a violation of Sections 2, 3 or 4 or that the change "constitutes a competitive practice which is unfair, destructive, predatory or otherwise undermines competition which is necessary in the public interest." This narrowing of the suspension power hardly furnishes any basis for the implication of the power to impose the challenged conditions.

Significantly, in this broad and sweeping revision of the Interstate Commerce Act, Congress has again failed to grant the Commission the power it here asserts. In short, neither the new Act nor its predecessor grants to the Commission the power it seeks to exercise, nor does either furnish a basis for the implication of such a novel power.

For these additional reasons, we urge that the decision of the district court be affirmed.[1]

Respectfully submitted,

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY, ET AL.,

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[1] It is beyond dispute that "the prevailing party may, of course, assert in a reviewing court any ground in support of his judgment, whether or not that ground was relied upon or even considered by the trial court." *Dandridge* v. *Williams*, 397 U.S. 471, 475 n. 6 (1970). This includes newly enacted legislation. *Hall* v. *Beale*, 396 U.S. 45, 48 (1968).

APPENDIX A

(e) Section 15 of the Interstate Commerce Act (49 U.S.C. 15), as amended by this Act, is further amended—

(1) by adding at the end of paragraph (7) thereof the following new sentence: "This paragraph shall not apply to common carriers by railroad subject to this part."; and

(2) by inserting a new paragraph (8) as follows:

"(8)(a) Whenever a schedule is filed with the Commission by a common carrier by railroad stating a new individual or joint rate, fare, or charge, or a new individual or joint classification, regulation, or practice affecting a rate, fare, or charge, the Commission may, upon the complaint of an interested party or upon its own initiative, order a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Such hearing shall be completed and a final decision rendered by the Commission not later than 7 months after such rate, fare, charge, classification, regulation, or practice was scheduled to become effective, unless, prior to the expiration of such 7-month period, the Commission reports in writing to the Congress that it is unable to render a decision within such period, together with a full explanation of the reason for the delay. If such a report is made to the Congress, the final decision shall be made not later than 10 months after the date of the filing of such schedule. If the final decision of the Commission is not made within the applicable time period, the rate, fare, charge, classification, regulation, or practice shall go into effect immediately at the expiration of such time period, or shall remain in effect if it has already become effective. Such rate, fare, charge, classification, regulation, or practice may be set aside thereafter by the Commission

if, upon complaint of an interested party, the Commission finds it to be unlawful.

"(b) Pending a hearing pursuant to subdivision (a), the schedule may be suspended, pursuant to subdivision (d), for 7 months beyond the time when it would otherwise go into effect, or for 10 months if the Commission makes a report to the Congress pursuant to subdivision (a), except under the following conditions:

"(i) in the case of a rate increase, a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part or, following promulgation of standards and procedures under section 1(5)(d) of this part, if the carrier is found to have market dominance, within the meaning of section 1(5)(c)(i) of this part, over the service to which such rate increase applies; or

"(ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part, or for the purposes of investigating such rate change upon a complaint that such rate change constitutes a competitive practice which is unfair, destructive, predatory or otherwise undermines competition which is necessary in the public interest.

"(c) The limitations upon the Commission's power to suspend rate changes set forth in subdivisions (b) (i) and (ii) apply only to rate changes which are not of general

applicability to all or substantially all classes of traffic and only if—

"(i) the rate increase or decrease is filed within 2 years after the date of the enactment of this subdivision;

"(ii) the common carrier by railroad notifies the Commission that it wishes to have the rate considered pursuant to this subdivision;

"(iii) the aggregate of increases or decreases in any rate filed pursuant to clauses (i) and (ii) of this subdivision within the first 365 days following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1976; and

"(iv) the aggregate of the increases or decreases for any rate filed pursuant to clauses (i) and (ii) of this subdivision within the second 365 day-period following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1977.

"(d) The Commission may not suspend a rate under this paragraph unless it appears from specific facts shown by the verified complaint of any person that—

"(i) without suspension the proposed rate change will cause substantial injury to the complainant or the party represented by such complainant; and

"(ii) it is likely that such complainant will prevail on the merits.

The burden of proof shall be upon the complainant to establish the matters set forth in clauses (i) and (ii) of this subdivision. Nothing in this paragraph shall be construed as establishing a presumption that any rate increase or decrease

in excess of the limits set forth in clauses (iii) or (iv) of subdivision (c) is unlawful or should be suspended.

"(e) If a hearing is initiated under this paragraph with respect to a proposed increased rate, fare, or charge, and if the schedule is not suspended pending such hearing and the decision thereon, the Commission shall require the railroads involved to keep an account of all amounts received because of such increase from the date such rate, fare, or charge became effective until the Commission issues an order or until 7 months after such date, whichever first occurs, or, if the hearings are extended pursuant to subdivision (a), until an order issues or until 10 months elapse, whichever first occurs. The account shall specify by whom and on whose behalf the amounts are paid. In its final order, the Commission shall require the common carrier by railroad to refund to the person on whose behalf the amounts were paid that portion of such increased rate, fare, or charge found to be not justified, plus interest at a rate which is equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. With respect to any proposed decreased rate, fare, or charge which is suspended, if the decrease or any part thereof is ultimately found to be lawful, the common carrier by railroad may refund any part of the portion of such decreased rate, fare, or charge found justified if such carrier makes such a refund available on an equal basis to all shippers who participated in such rate, fare, or charge according to the relative amounts of traffic shipped at such rate, fare, or charge.

"(f) In any hearing under this section, the burden of proof is on the common carrier by railroad to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable. The Commis-

sion shall specifically consider, in any such hearing, proof that such proposed changed rate, fare, charge, classification, rule, regulation, or practice will have a significantly adverse effect (in violation of section 2 or 3 of this part) on the competitive posture of shippers or consignees affected thereby. The Commission shall give such hearing and decision preference over all other matters relating to railroads pending before the Commission and shall make its decision at the earliest practicable time."